(16,671.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 458.

THE TERRITORY OF NEW MEXICO, APPELLANT,

vs.

THE UNITED STATES TRUST COMPANY OF NEW YORK ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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1 In the Supreme Court of the Territory of New Mexico.

Be it remembered that heretofore, to wit, on the 9th day of July, A. D. 1897, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of record; which said record is in the words and figures following, to wit:

Transcript of Record.

In the Supreme Court of New Mexico, July Term, 1897.

TERRITORY OF NEW MEXICO, Appellant, *vs.* UNITED STATES TRUST COMPANY OF NEW YORK and Charles A. Smith, Receiver of Atlantic and Pacific Railroad Company.	No. 733.

Appeal from second judicial district.

Filed in my office this Jul- 9th, 1897.

GEO. L. WYLLYS, *Clerk.*

2 Be it remembered that heretofore, to wit: on the 16th day of July, 1895, there was filed in the office of the clerk of the district court of the second judicial district of the Territory of New Mexico, sitting for the trial and hearing of causes arising under the Constitution and laws of the United States a bill of complaint which said bill of complaint is in the words and figures following, to wit:

In the District Court of the Second Judicial District of the Territory of New Mexico for the Trial and Hearing of Causes Arising under the Constitution and Laws of the United States.

UNITED STATES TRUST COMPANY OF NEW YORK, Complainant, *against* ATLANTIC AND PACIFIC RAILROAD COMPANY, ATCHISON, Topeka and Santa Fe Railroad Company, St. Louis and San Francisco Railway Company; Aldace F. Walker, John J. McCook, and Joseph C. Wilson, as Receivers of the Property and Franchises of Atlantic and Pacific Railroad Company; Aldace F. Walker, John J. McCook, and Joseph C. Wilson, as Receivers of the Property and Franchises of Atchison, Topeka and Santa Fe Railroad Company; Aldace F. Walker, John J. McCook, and Joseph C. Wilson, as Receivers of the Property and Franchises of St. Louis and San Francisco Railway Company; The Mercantile Trust Company, and The Boston Safe Deposit and Trust Company, Defendants.	In Equity.

3 *Bill of Complaint.*

To the Honorable Needham C. Collier, judge of the district court of the second judicial district of the Territory of New Mexico:

Your orator United States Trust Company of New York, a corpo-

ration duly created by and under the laws of the State of New York and a citizen of the said State, having its principal office and place of abode in the city of New York, brings this, its bill, by leave of the court first had and obtained, against Atlantic and Pacific Railroad Company, a corporation created, organized and existing under and by virtue of the laws of the United States of America, and having its principal office and place of abode at Albuquerque, in the Territory of New Mexico; the Atchison, Topeka and Santa Fe Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the Territory and State of Kansas, and having its principal office and place of abode in and being a citizen and resident of said State; the St. Louis and San Francisco Railway Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Missouri, and having its principal office and place of abode in and being a citizen and resident of the said State; Aldace F. Walker, as receiver, a citizen of the State of Illinois, and having his place of abode at Chicago, in said State; John J. McCook, as receiver, a citizen of the State of New York, and having his place of abode in the city of New York, in the said State; Joseph C. Wilson, as receiver, a citizen of the State of Kansas, and having his place of abode at Topeka, said State; the Mercantile Trust Company, a corporation duly created, organized and existing under and by virtue of the laws of the State
4 of New York, and a citizen of said State, having its principal office and place of abode in the city of New York, in said State; and the Boston Safe Deposit and Trust Company, a corporation duly organized and existing under the laws of the State of Massachusetts, and a citizen of said State, having its principal office and place of abode at Boston, in said State; and thereupon your orator complains and says:

First. Your orator is a corporation, bearing the corporate name of United States Trust Company of New York, duly created and existing under the laws of the State of New York, and is a citizen of said State, and has its principal office and place of business in the city of New York, and as such corporation is fully authorized and empowered to hold in trust the property conveyed to it in trust as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgage or deed of trust hereinafter described.

Second. That the defendant, Atlantic and Pacific Railroad Company, is a corporation duly organized and existing under and by virtue of the laws of the United States of America, to wit, an act of Congress approved July 27, 1866, being a public act to which your orator prays leave to refer as a part of this bill, as fully as though incorporated in the body thereof; and the acts of Congress supplementary thereto and amendatory thereof, including particularly an act approved April 20, 1871, to which your orator prays leave to refer as part of this bill, as fully as though incorporated in the body thereof.

Third. That the defendant, Atlantic and Pacific Railroad Company, duly complied with the provisions of said acts of Congress, and became and was thereby duly authorized and empowered to

and did thereafter construct or acquire by purchase or lease,
5 and operate and maintain the railroads and other property hereinafter mentioned.

Fourth. That in order to secure the bonds to be issued by it, said defendant Atlantic and Pacific Railroad Company, on or about the 1st day of July, 1880, being thereunto by law in all respects duly authorized, and due corporate action having been had, made, executed and delivered to your orator as trustee a certain mortgage or deed of trust called the Western Division first mortgage of said defendant, bearing date the 1st day of July, 1880, in and by which it conveyed to your orator as trustee all and singular its railway and property, real, personal and mixed, and all franchises of every kind or description and wheresoever situated, then or thereafter composing or pertaining to that part of the railroad and telegraph line of said defendant known as the Western division, by the following description (the words "party of the first part," referring to said defendant, and the words "party of the second part," referring to your orator,) to wit:

"The franchises, rights of way, railroad, telegraph, lands, land grants, shops, depots, buildings, structures, bridges, viaducts, rolling stock, tools, machinery, supplies and all property of every description now and hereafter composing and pertaining to that part of the railroad and telegraph line of the party of the first part known as the Western division, beginning at Albuquerque, on the Rio Grande river, in the Territory of New Mexico, and thence running by way of the Agua Frio, or other suitable pass, to the head-waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route
to the Colorado river, at such point as may be selected by
6 the party of the first part for crossing, and thence by the most practicable and eligible route to the Pacific ocean, or however otherwise said Western division may be located or described; and also all additions and extensions which the party of the first part may make to said railroad and telegraph and the other property and things aforesaid, together with all the rents, tolls, issues, profits, income, privileges, and appurtenances thereunto belonging, or in anywise appertaining, and also all the estate right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the party of the first part of, in and to the same, and any and every part thereof, with the appurtenances."

That since the execution of said Western Division first mortgage said defendant Atlantic and Pacific Railroad Company has acquired a large amount of railroad, engines, cars and other equipment and other personal property, and a large amount of real estate and interests in and rights to real estate, all of which became and are subject to the lien of said mortgage, and the said mortgage is and remains a valid and subsisting lien upon all the property described therein, and upon said subsequently acquired property, and upon all the property, rights and franchises granted to and conferred upon the said Atlantic and Pacific Railroad Company by the acts

of Congress hereinbefore mentioned or subsequently acquired thereunder.

Fifth. That being thereunto by law in all respects duly authorized, and due corporate action having been had, and under and in accordance with the provisions of said Western Division first mortgage, said defendant Atlantic and Pacific Railroad Company, on and subsequently to said 1st day of July, 1880, made, exe-
7 cuted and delivered its bonds, all bearing date on that day, to an amount not exceeding $25,000 a mile, and amounting in the aggregate to $16,000,000, as follows, viz:

(*a.*) 15,950 coupon bonds, each for the sum of $1,000, amounting in the aggregate to $15,950,000, in and by each of which bonds the said defendant Atlantic and Pacific Railroad Company promised to pay to your orator, as trustee, or to the bearer thereof on the 1st day of July, 1910, at the agency of the railroad company in the city of New York, the sum of $1,000 in gold coin of the United States of America, and also to pay interest thereon at the rate of six per cent. per annum in like gold coin semi-annually on the first days of January and July in each year, at the agency of said company in the city of New York, on presentation as they severally became due of coupons for such interest annexed to said bonds and payable to bearer.

(*b.*) Ten registered bonds each for the sum of $5,000, and amounting in the aggregate to $50,000, in and by each of which bonds the said defendant, Atlantic and Pacific Railroad Company, promised to pay to your orator, as trustee, or to the registered holder thereof, the sum of $5,000 on the 1st day of July, 1910, in gold coin of the United States of America, at the agency of the railroad company in the city of New York, and also to pay interest thereon at the rate of six per cent. per annum in like gold coin semi annually on the first days of January and July in each year, at the agency of the railroad company in the city of New York.

Sixth. That all of said bonds, amounting in the aggregate to $16,000,000 of principal, were duly issued by said defendant, Atlantic and Pacific Railroad Company, and authenticated by the
8 certificate thereon signed by your orator in accordance with the provisions of said bonds and of said Western Division first mortgage or deed of trust, and were duly negotiated and delivered for value prior to the defaults hereinafter mentioned; and all of said bonds are now outstanding and are valid obligations of said defendant, Atlantic and Pacific Railroad Company. That a true copy of said Western Division first mortgage, dated July 1, 1880, in which are set forth true copies of said coupon bonds and of said registered bonds, is hereto annexed marked "Exhibit A," and your orator prays that the same may be taken as part of this bill of complaint as fully as though incorporated in the body thereof.

Seventh. That prior to the making and issue of the said Western Division first mortgage six per cent. bonds, the defendants, Atchison, Topeka and Santa Fe Railroad Company, and St. Louis and San Francisco Railway Company, acquired the control of the defendant Atlantic and Pacific Railroad Company, through the pur-

chase and ownership of a majority of its capital stock; that the said bonds were issued and disposed of for the purpose of completing the line of railroad of the Atlantic and Pacific Railroad Company, known as its Western division, from Albuquerque, on the Rio Grande river, in the Territory of New Mexico, to The Needles, on the Colorado river, on the boundary of the State of California, in order to form, with the railroads of the said Atchison, Topeka and Santa Fe Railroad Company and the St. Louis and San Francisco Railway Company a through line to the Pacific coast, and that for good and valuable considerations, as additional security for the payment of the principal and interest of the said bonds, the said Atchison, Topeka and Santa Fe Railroad Company and St. Louis and San Francisco Railway
9 Company on the 1st day of July, A. D. 1880, made and executed an agreement whereby they severally covenanted and agreed with the Atlantic and Pacific Railroad Company and your orator, as trustee of said mortgage, that if the earnings from the said Western division should prove insufficient to pay all coupons on said bonds as they matured, they would contribute ratably for the purpose of paying and cancelling the same, such sum as might be necessary for the purpose, from their respective earnings upon all business arising from and delivered to said Western division, not exceeding twenty-five per cent. of the gross amount of their said described earnings. That a copy of said agreement of guaranty is hereto annexed marked "Exhibit B," and your orator prays that the same may be taken as a part of this bill of complaint, with the same effect as if fully incorporated in the body thereof.

Eighth. That on or about the 1st day of October, 1880, the said defendant Atlantic and Pacific Railroad Company made, executed and delivered to the said defendant, The Boston Safe Deposit and Trust Company, as trustee, a certain mortgage, or deed of trust, known as its income mortgage, bearing date on that day, in and by which it agreed with the said trustee to make up and furnish to said trustee from time to time a fair and just account of payments and expenses and gross and net earnings of said Western division for the six months ending on each first day of January and July in each year, so as to exhibit the true sum applicable to the payment of interest on the income bonds referred to in said trust deed, and to pay the said interest or so much thereof as has been earned on the first days of April and October in each year. That the said in-
10 denture was made for the purpose of securing the payment of the principal and interest of bonds to be issued under the said indenture to an amount not exceeding $18,750 a mile of completed road, and that, as your orator is informed and believes, such income bonds have been issued thereunder and are now outstanding to an amount in the aggregate of $12,000,000. But your orator charges that the lien and obligation of the said bonds against the defendant Atlantic and Pacific Railroad Company and its property, if any, are inferior and subordinate to the lien and obligation of the bonds secured by the said Western division first mortgage.

Ninth. That on or about the first day of September, 1887, the said

defendant Atlantic and Pacific Railroad Company, made, executed and delivered unto the defendant, The Mercantile Trust Company, its certain second mortgage or deed of trust upon the said Western division, bearing date on that day, in and by which it conveyed to the said Mercantile Trust Company, as trustee, the property in said mortgage described, being the same property previously conveyed by the said Western division first mortgage as hereinbefore described. That the said mortgage was made to secure the due payment of the principal and interest of bonds known as second-mortgage six per cent. guaranteed gold bonds of the Atlantic and Pacific Railroad Company, Western division, limited to $10,000 a mile of completed railroad of the Western division of said railroad company, to be guaranteed severally, but not jointly, as to the payment of one-half of the principal and interest by the Atchison, Topeka and Santa Fe Railroad Company and as to the payment of one-half of the principal and interest by the St. Louis and San Francisco Railway Company, which said last-named two companies
11 joined in the execution of the mortgage above set forth as guarantors of the payment of said principal and interest; which said bonds were each for the principal sum of $1,000, payable on the 1st day of September, 1907, and to bear interest at the rate of six per cent. per annum, payable semi-annually on the first days of March and September in each year, at the agency of said railroad company in the city of New York.

That of the bonds authorized to be issued under and to be secured by said mortgage or deed of trust, the defendant Atlantic and Pacific Railroad Company has made and issued, as your orator is informed and believes, second-mortgage six per cent. guaranteed gold bonds for the principal sum of $5,600,000, of which, $5,500,000 are now actually outstanding, and all, or the greater part of which, were taken by the defendants Atchison, Topeka and Santa Fe Railroad Company and St. Louis and San Francisco Railway Company as security for, or in payment of, debts claimed to be due to them from the Atlantic and Pacific Railroad Company, and such bonds are now held by them. That the lien and claim of the said second-mortgage six per cent. guaranteed gold bonds upon the railroad and property of the defendant Atlantic and Pacific Railroad Company, if any, are expressly subject, subordinate and inferior to the lien of the Western Division first mortgage hereinbefore referred to.

Tenth. That on each of the first days of January and July, 1894, and January and July, 1895, the holders of said Western Division first-mortgage six per cent. bonds to the amount of $16,000,000, were entitled to collect and receive from said defendant Atlantic and Pacific Railroad Company, the interest falling due on said
12 bonds on each of said first days of January and July in each of said years respectively, being the semi-annual installments of interest due on each of said bonds on said dates; but the said defendant Atlantic and Pacific Railroad Company made default in the payment of said interest; and said semi-annual installments of interest falling due on the said dates respectfully, to-

gether with certain interest previously due on said bonds, remain wholly due and unpaid.

Eleventh. That on or about the 30th day of December, 1893, the defendant, The Mercantile Trust Company, filed in this court its bill of complaint against the said defendant Atlantic and Pacific Railroad Company, and therein set forth, among other things, that the said complainant was the trustee under the second mortgage upon the Western division of said company hereinbefore mentioned; that in and by said mortgage the said defendant Atlantic and Pacific Railroad Company agreed, among other things, promptly to pay all takes and assessments upon the premises conveyed thereby, but that the said company had wholly failed to keep and perform its said covenants, and that there were then due large amounts of unpaid taxes in the Territories of Arizona and New Mexico; that the said complainant had duly demanded that the said railroad company should keep and perform its said covenants, but that the said railroad company had wholly failed and refused to comply with such demand; and the said complainant in said cause further showed that the defendant Atlantic and Pacific Railroad Company was wholly and totally insolvent and unable to meet its existing and presently accruing obligations, and that the interests of the holders of the second-mortgage bonds secured by said mortgage were seriously imperiled thereby, and unless accorded judicial pro-
13 tection would be wholly lost, to the great detriment and damage of said bondholders.

That upon the filing of said bill such proceedings were thereupon had, that on January 4, A. D. 1894, the Honorable Needham C. Collier, a judge of this court, made an order appointing Joseph W. Reinhart, John J. McCook and Joseph C. Wilson, receivers, as in said bill prayed, of all and singular the lands, tenements and hereditaments of the defendant Atlantic and Pacific Railroad Company covered by the said second mortgage, which order was duly filed in said cause on said 4th day of January, 1894. That, as your orator is informed and believes, the said Joseph W. Reinhart, John J. McCook and Joseph C. Wilson filed their bonds and qualified as such receivers and entered into possession of all the real estate and property of the Western division of said defendant railroad company and continued in such possession until the 23rd day of August, 1894 on which date the said Joseph W. Reinhart resigned as such receiver, and by an order made and entered in said cause on or about that day, Aldace F. Walker was appointed receiver in his place and duly filed his bond and qualified as such receiver and entered into possession of the said railroad and property as coreceiver with said John J. McCook and Joseph C. Wilson; and from and after said date said Aldace F. Walker, John J. McCook and Joseph C. Wilson, as such receivers, have had and now have the actual possession, custody and control of all the property known as the Western division of the said railroad company covered by the said second mortgage and being the same property covered by and included in the said Western Division first mortgage to your orator as

aforesaid; and, by reason of the fact that this court
14 has, by the appointment of such receivers, taken into its custody and possession all of said mortgaged property situated within the jurisdiction of this court, your orator believes that it cannot proceed to adequately enforce the security provided in and by the said mortgage in any other court, and your orator is without remedy save in this court. That by an amended and supplemental bill of complaint, heretofore filed in said cause, your orator has been made a party defendant thereto for the sole avowed purpose of ascertaining the amount due on said first-mortgage bonds. Your orator prays leave to refer to the said bill of complaint of The Mercantile Trust Company, and to the order appointing said receivers, and to all other acts and proceedings in said cause on file in this court, as part of this, your orator's bill of complaint, with the same effect as if fully incorporated in the body thereof.

Twelfth. And your orator further shows that the defendants Atchison, Topeka and Santa Fe Railroad Company and St. Louis and San Francisco Railway Company have wholly made default in the fulfillment of their agreement hereinbefore mentioned to contribute to the extent of twenty-five per cent. of their earnings from business interchanged with the Atlantic and Pacific Railroad Company toward the payment of the interest upon the said first-mortgage bonds, and that the receivers of property and franchises of said two companies, who were also appointed receivers of the railroads and property of the defendant Atlantic and Pacific Railroad Company, have likewise wholly failed to fulfill and carry out the said agreement.

That there are important and nice questions in dispute between
15 said three railroad companies and their respective receivers, growing out of various contracts for the operation of said Atlantic and Pacific railroad and the payment of its bonded and guaranteed debt, and that, as your orator is advised and believes, it is not practicable for the receivers of said Atchison, Topeka and Santa Fe railroad and said St. Louis and San Francisco railway to adequately assert and protect the interests of said Atlantic and Pacific first-mortgage bondholders.

Thirteenth. And your orator further shows that the said defendant Atlantic and Pacific Railroad Company is hopelessly insolvent and unable to pay its indebtedness now outstanding to a large amount, including the overdue interest upon its first-mortgage bonds hereinbefore mentioned, and that the said defendant railroad company cannot secure the means of paying the said overdue obligations; and that it is necessary for the protection of the holders of said bonds issued under said Western Division first mortgage, that the property of said railroad company should be sold without delay. That the property and premises covered by the said first mortgage so made to your orator as aforesaid, are and constitute very inadequate security for the payment of the amounts due on the said bonds, and that the said mortgaged property and premises are so situated that they cannot, nor can any part thereof, be sold in parcels without great injury to the interests of the beneficiaries under

your orator's trust, and all persons interested in the property of said defendant railroad company.

Fourteenth. That default has been made in the payment of interest upon all of said first-mortgage bonds and such default has continued during more than six consecutive months; that the holders of the entire amount of the bonds secured by the said first mortgage, have joined in a demand requiring your orator, as
16 trustee under said mortgage or deed of trust, to file this bill and have concurred in the application for a decree for the foreclosure of said mortgage and the sale of the mortgaged premises, and for the appointment in the meantime of a receiver thereof; that the holders of all of said bonds have likewise united in a declaration electing that the principal of the said bonds shall be considered due, and that by reason of the facts hereinbefore alleged, the whole amount of the principal of said bonds, as well as all interest due thereon, as hereinbefore mentioned, is now due and payable, and that your orator is entitled to apply to this court for the foreclosure and sale of the premises covered by the said first mortgage, and for the appointment in the meantime of a receiver of said mortgaged premises in the interest of said first-mortgage bondholders.

Fifteenth. That no proceedings have been had at law or in equity for the collection of said mortgage debt or any part thereof.

In consequence of the embarrassed condition of the financial affairs of the defendant railroad company and on account of the many difficulties which are manifestly, from the allegations hereinbefore contained, involved in the execution of your orator's said trust, it is impossible for your orator, as trustee under said first mortgage, to execute its said trust in the way and manner specified and provided in and by the said mortgage without the aid or interposition of this honorable court, in chancery sitting, nor can the said trust be executed, as your orator is advised and charges, and the rights of your orator be fully protected in the premises otherwise than by judicial sale of the mortgaged premises and of all the franchises, property, premises and appurtenances of said defendant railroad com-
17 pany; and your orator is likewise advised and charges that until such sale can be had and the proceeds thereof distributed, it is expedient and necessary that the franchises, property, premises and appurtenances so mortgaged to your orator in trust, as aforesaid, and all the rights, franchises and property of said railroad company of whatever name, nature or description covered by said mortgage, including all its moneys on hand and the earnings of the same, be placed in and continue in the hands and under the control of a receiver appointed herein by this court, with such proper powers and control over the same as to the court shall seem right and equitable to be conferred.

Sixteenth. That this suit is one arising under the Constitution and laws of the United States, and that the matter in controversy herein is upwards of five thousand dollars exclusive of costs.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the rules of the common law, and can have adequate relief only in a court of equity, where matters of this na-

ture are properly cognizable and relievable, to the end that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may separately and severally answer make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information and belief, to all the matters and charges aforesaid, and as fully in every respect as if the same were here again repeated, and they thereunto particularly interrogated, your orator prays:

First. That a receiver may be appointed in this cause of all and singular the rights, franchises, and property of every name
18 and nature of said defendant Atlantic and Pacific Railroad Company, with power and authority to operate said railroads and to preserve the property of said defendant, and to carry on the business of said railroad company, under the direction of this court, with all the usual powers and duties of receivers in such cases, and with authority to proceed to recover, by suit or otherwise, all property in the hands of other parties belonging to the said railroad company, and all moneys justly due to it and unlawfully withheld by any person on any pretense whatever, and that an injunction may issue out of this court restraining and enjoining the said railroad company and all and every its agents and servants from, in any way, interfering with the possession or control of the property of said railroad company under the control of said receiver, and from selling, transferring, conveying, leasing or otherwise disposing of or encumbering any of the property, rights or franchises of the said railroad company.

Second. That the said Western Division first mortgage, dated July 1, A. D., 1880, may be decreed to be a first lien upon all the property, real, personal and mixed, rights and franchises described in the said mortgage, and then owned or subsequently acquired by said defendant Atlantic and Pacific Railroad Company to secure the payment of said bonds issued thereunder, and the interest and coupons for interest on the said bonds outstanding and unpaid, and the interest thereon, and that an account be taken of the bonds secured by said first mortgage and of the amount due and unpaid on the said bonds and the coupons thereon.

Third. That said defendant Atlantic and Pacific Railroad Company may be decreed to pay all moneys now due or to become
19 due and payable under and by virtue of said first mortgage, and of the bonds issued thereunder and secured thereby, and of the coupons for interest thereon, and that in default thereof said Atlantic and Pacific Railroad Company and all persons claiming under, by or through it, or claiming any interest in said mortgaged premises and property or any part thereof, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises and every part and parcel thereof, and that all the property of said defendant railroad company, real, personal and mixed, and all the effects, rights, immunities and franchises belonging to it or covered by said mortgage may be sold under the direction of this honorable court in such manner

as the court may direct and according to the law and practice of this court, to satisfy the amount found due, and that out of the proceeds of such sale, or the net earnings while in the hands of said receiver, there may be paid first, the costs and expenses of your orator in this suit, including proper attorneys', solicitors' and counsel fees, with a proper compensation to your orator for its own service as trustee, to be allowed by the court, and that the residue thereof may be applied in such proportions and when and as the court shall order and direct, and in due order of priority, to the payment of the said bonds issued under said first mortgage and the coupons for interest thereon, together with interest on said bonds and coupons, and that any deficiency on such sale may be entered in this cause as a judgment against said defendant railway company.

Fourth. That your orator may have such other and further relief in the premises as the circumstances of the case may require and may be agreeable to equity.

20 May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the defendants Atlantic and Pacific Railroad Company, Atchison, Topeka and Santa Fe Railroad Company, St. Louis and San Francisco Railway Company, Aldace F. Walker, John J. McCook and Joseph C. Wilson, as receivers of the property and franchises of the Atlantic and Pacific Railroad Company; Aldace F. Walker, John J. McCook and Joseph C. Wilson, as receivers of the property and franchises of Atchison, Topeka and Santa Fe Railroad Company; Aldace F. Walker, John J. McCook and Joseph C. Wilson, as receivers of the property and franchises of St. Louis and San Francisco Railway Company; The Mercantile Trust Company and The Boston Safe Deposit and Trust Company, to appear and answer this bill.

And your orator will ever pray, &c.

UNITED STATES TRUST COMPANY
OF NEW YORK,
[SEAL.] By JOHN A. STEWART, *President.*

Attest:
H. L. THORNELL, *Secretary.*

EDWARD W. SHELDON,
Complainant's Solicitor.
FREDERICK B. JENNINGS,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, John A. Stewart, being duly sworn, depose and say that I am president of The United States Trust Company of New York, the complainant above named, and have been such president for
21 a number of years past; that I have read the foregoing bill of complaint and know the contents thereof, and that the same is true to the best of my knowledge, information and belief;

that this verification is not made by the complainant because it is a corporation; that my knowledge or information *are* derived from having taken part in some of the transactions spoken of, from statements, made to me, and from examination of the papers, and the same constitute my grounds of belief, and that the seal affixed to said bill of complaint is the corporate seal of said complainant and was so affixed by its authority.

JOHN A. STEWART.

Sworn to before me this 10th day of July, 1895.

HENRY C. KENNEDY,

[SEAL.] *Notary Public, Kings Co.*

Cert. filed N. Y. Co.

EXHIBIT A.

This indenture, made this first day of July, in the year of our Lord one thousand eight hundred and eighty, by and between the Atlantic and Pacific Railroad Company, a corporation duly organized and existing under the laws of the United States of America, party of the first part, and the United States Trust Company of New York, a corporation duly organized and existing under the laws of — State of New York, party of the second part, witnesseth:

That whereas the party of the first part, under the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and
22 Arkansas to the Pacific coast," approved July 27, 1866, is authorized to construct, is now constructing, and has partially constructed, and intends to complete, equip and put in operation as rapidly as practicable, that part of said company's authorized line of railroad and telegraph lying between the Rio Grande river and the Pacific ocean, and hereinafter described and referred to as the "Western division;"

And whereas, the party of the first part has duly executed an agreement under seal, dated January 31, 1880, wherein, among other things, it agreed with the Atchison, Topeka and Santa Fe Railroad Company and the St. Louis and San Francisco Railway Company to complete said Western division as rapidly as practicable, and that the railroad of the St. Louis and San Francisco Railway Company and the railroad of the Atchison, Topeka and Santa Fe Railroad Company and the Western division of the railroad of the Atlantic and Pacific Railroad Company, and such of their branches and leased lines as may be necessary for the purpose, shall be operated by the respective companies as an uninterrupted, continuous through line of railroad to and from the Mississippi and Missouri rivers and the Pacific coast for and during the term of thirty (30) years from the first day of July in the present year, and afterwards until the first day of October, A. D. 1910; and in consideration thereof said Atchison, Topeka and Santa Fe Railroad Company and said St. Louis and San Francisco Railway Company have executed the contract of guaranty indorsed hereon;

And whereas, said act of Congress provides as follows:

23 "SECTION 3. And be it further enacted, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad wherever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided, further, that

24 the railroad company receiving the previous grant of land may assign their interest to said Atlantic and Pacific Railroad Company, or may consolidate, confederate and associate with said company upon the terms named in the first and seventeenth sections of this act: Provided, further, that all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: And provided, further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: And provided, further, that no money shall be drawn from the Treasury of the United States to aid in the construction of the said Atlantic and Pacific railroad.

"SECTION 4. And be it further enacted, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior, and if

it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said
25 completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

And whereas, by an act of Congress, entitled "An act to enable the Atlantic and Pacific Railroad Company to mortgage its road," approved April 20, 1871, it was enacted as follows, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

"That the Atlantic and Pacific Railroad Company, organized under act of Congress of July 27, 1866, is hereby authorized to make and issue its bonds, in such form and manner, for such sums, payable at such times, and bearing such rate of interest, and to dispose of them on such terms as its directors may deem advisable; and to secure said bonds, the said company may mortgage its road, equipment, lands, franchises, privileges, and other rights and property, subject to such terms, conditions and limitations as its directors may prescribe. As proof and notice of the legal execution and effectual delivery of any mortgage hereafter made by said company, it shall be filed and recorded in the office of the Secretary of the Interior; provided that, if the company shall hereafter suffer any breach of the conditions of the act above referred to, under which it is organized, the rights of those claiming under any mort-
26 gage made by the company to the lands granted to it by said act shall extend only to so much thereof as shall be coterminous with or appertain to that part of said road which shall have been constructed at the time of the foreclosure of said mortgage."

And, whereas, the party of the first part, for the purpose of obtaining means to complete the construction and equipment of the "Western division," has resolved to issue and negotiate its first-mortgage bonds to an amount not exceeding twenty-five thousand dollars a mile, to consist of a series of coupon bonds of one thousand dollars each, numbered consecutively from number 1 (one) upwards, and registered bonds of five thousand dollars each, numbered consecutively from number 1 (one) upwards, which bonds bear even date herewith; and said coupon bonds are all of the tenor and form following, namely:

No. —. UNITED STATES OF AMERICA. $1,000.

Atlantic and Pacific Railroad Company, Western division.

First-mortgage Coupon Six per Cent. Gold Bond.

Know all men by these presents that the Atlantic and Pacific Railroad Company is indebted and promises to pay to the United States Trust Company of New York, trustee or bearer, one thousand dollars, on the first day of July, A. D. 1910, in gold coin of the United States of America of or equivalent to the present standard of weight and fineness, together with interest thereon at the rate of six per cent. per annum in like gold coin, payable semi-annually on the first days of January and July, according to the tenor
27 of the coupons hereto annexed, and upon presentation thereof as they severally fall due; both principal and interest will be paid at the agency of the railroad company in the city of New York.

It is agreed between the Atlantic and Pacific Railroad Company and the holder of this bond that no recourse shall be had for its payment to the individual liability, if any, of any stockholder of the company.

This bond is one of a series of bonds, coupon and registered, not exceeding in all twenty-five thousand dollars a mile, which bonds are of even date and like tenor; and, without any preference by reason of priority of issue, or of any cause or thing whatsoever, are equally protected, and payment thereof equally secured, by a first mortgage of even date herewith, to the United States Trust Company of New York, trustee, duly executed and delivered by the Atlantic and Pacific Railroad Company, conveying to said trustee, and its successor or successors in said trust, the franchises, railroad, telegraph, lands, land grants, and other property pertaining to said Western division, as set forth in said mortgage and upon the trusts therein declared.

It is provided in said mortgage that the net proceeds of the land grant shall be deposited with the United States Trust Company of New York, trustee, and used solely:

First. To provide for any deficiency in the net earnings for the payment of interest on the first-mortgage bonds.

Second. To provide for any deficiency in the net earnings for the payment of interest on the second-mortgage bonds.

Third. For the payment of the principal and interest of any
28 advances made by the Atchison, Topeka and Sante Fe Railroad Company, and the St. Louis and San Francisco Railway Company, to the Atlantic and Pacific Railroad Company, under their contract indorsed upon this mortgage.

Fourth. For the purchase and cancellation of the first-mortgaged bonds, whenever they can be obtained by public advertisement, at not exceeding one hundred and ten per cent. and interest.

And it is also provided that the first-mortgage bonds shall be receivable at par in payment for any or all lands sold by the Atlantic

and Pacific Railroad Company under the provisions of said mortgage; and this bond is entitled to the benefit of such provisions.

This bond shall pass by delivery or by transfer upon the books of the Atlantic and Pacific Railroad Company at the option of the holder; and, after a registration of ownership certified hereon by the treasurer or transfer agent of said company, no transfer except upon the books of said company shall be valid, unless the last transfer was made to bearer, thereby restoring transferability by delivery.

This bond is not valid unless authenticated by a certificate indorsed hereon, and signed by the United States Trust Company of New York, trustee, or its successor or successors in said trust.

In witness whereof, the Atlantic and Pacific Railroad Company has caused its corporate seal to be affixed hereto, and these
[SEAL.] presents to be signed by its president, and attested by its secretary, this first day of July, A. D. 1880,

ATLANTIC AND PACIFIC RAILROAD COMPANY,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

29 And said registered bonds are of the tenor and form following, namely:

No. —. UNITED STATES OF AMERICA. $5,000.

Atlantic and Pacific Railroad Company, Western division.

First-mortgage Registered Six per Cent. Gold Bond.

Know all men by these presents that the Atlantic and Pacific Railroad Company is indebted and promises to pay to the United States Trust Company of New York, trustee, or the registered holder hereof, the sum of five thousand dollars, on the first day of July, A. D., 1910, in gold coin of the United States of America of or equivalent to the present standard of weight and fineness, with interest thereon at the rate of six per cent. per annum in like gold coin, payable semi-annually on the first days of January and July; both principal and interest payable at the agency of the railroad company in the city of New York.

It is agreed between the Atlantic and Pacific Railroad Company and the holder of this bond that no recourse shall be had for payment thereof to the individual liability, if any, of any stockholder of the company.

This bond is transferable only upon the books of the railroad company, and is one of a series of bonds, coupon and registered, not exceeding in all twenty-five thousand dollars a mile, which bonds are of even date and like tenor, and, without any preference by
30 reason of priority of issue, or of any cause or thing whatsoever, are equally protected and payment thereof equally secured by a first mortgage of even date herewith, to the United States Trust

Company of New York, trustee, duly executed and delivered by the Atlantic and Pacific Railroad Company, conveying to said trustee, and its successor or successors in said trust, the franchises, railroad, telegraph, lands, land grants and other property pertaining to said Western division as set forth in said mortgage and upon the trusts therein declared.

It is provided in said mortgage that the net proceeds of the land grant shall be deposited with the United States Trust Company of New York, trustee, and used solely:

First. To provide for any deficiency in the net earnings for the payment of interest on the first-mortgage bonds.

Second. To provide for any deficiency in the net earnings for the payment of interest on the second-mortgage bonds.

Third. For the payment of the principal and interest of any advances made by the Atchison, Topeka and Santa Fe Railroad Company and the St. Louis and San Francisco Railway Company to the Atlantic and Pacific Railroad Company under their contract endorsed upon this mortgage.

Fourth. For the purchase and cancellation of the first-mortgage bonds, whenever they can be obtained by public advertisement, at not exceeding one hundred and ten per cent. and interest.

And it is also provided that the first-mortgage bonds shall be receivable at par in payment of any or all lands sold by the Atlantic and Pacific Railroad Company under the provisions of said
31 mortgage. And this bond is entitled to the benefit of such provisions.

This bond is not valid unless authenticated by a certificate endorsed hereon, and signed by the United States Trust Company of New York, trustee, or its successor or successors in said trust.

In witness whereof, the Atlantic and Pacific Railroad Company has caused its corporate seal to be affixed hereto, and these
[SEAL.] presents to be signed by its president, and attested by its secretary, this first day of July, A. D. 1880.

ATLANTIC AND PACIFIC RAILROAD COMPANY,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

And whereas, the following certificate is to be endorsed upon each of said coupon and registered bonds, namely:

The within bond is one of a series issued by the Atlantic and Pacific Railroad Company, and described in a first mortgage of even date herewith, executed by said railroad company to the United States Trust Company of New York, as trustee, upon the franchises, railroad, telegraph, lands, land grants, and other property pertaining to the Western division of said railroad company, as set forth in said mortgage; and this bond is entitled to the benefit of the agreement of the Atchison, Topeka and Santa Fe Railroad Company, and the St. Louis and San Francisco Railway Company, endorsed upon said mortgage.

—— ——, *Trustee.*

32 And whereas, the party of the first part, being about to issue some of said bonds and intending to issue the remainder from time to time as it may deem expedient, for the purposes aforesaid, desires to secure the principal and interest of all the said bonds by a mortgage of the franchises and properties hereinafter described to the party of the second part, as trustee, for the equal benefit of all the persons and corporations who may become the holders of any of said bonds, without any preference by reason of priority of issue, or any other cause or thing whatsoever, and the party of the second part has signified its willingness to accept said trust:

Now, therefore, the party of the first part, in consideration of the premises, and of one dollar to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of all said first-mortgage bonds, both coupon and registered, according to the tenor thereof, does, by these presents, grant, bargain, sell, transfer, assign and convey to the party of the second part, trustee as hereinafter set forth, its successor or successors in said trust, and assigns forever, the franchises, rights of way, railroad, telegraph, lands, land grants, shops, depots, buildings, structures, bridges, viaducts, rolling stock, tools, machinery, supplies, and all property of every description now and hereafter composing and pertaining to that part of the railroad and telegraph line of the party of the first part known as the Western division, beginning at Albuquerque on the Rio Grande river, in the Territory of New Mexico, and thence running by way of the Agua Frio, or other suitable pass, to the head-waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found
33 most suitable for a railway route to the Colorado river, at such a point as may be selected by the party of the first part for crossing, and thence by the most practicable and eligible route to the Pacific ocean, or however otherwise said Western division may be located or described; and also all additions and extensions which the party of the first part may make to said railroad and telegraph and the other property and things aforesaid, together with all the rents, tolls, issues, profits, income, privileges and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and in equity, of the party of the first part, of, in and to the same, and any and every part thereof, with appurtenances:

To have and to hold the same to the party of the second part, trustee as aforesaid, its successor or successors in said trust, and their assigns, in trust for the benefit and security of any and all persons and corporations who shall be or become holders of any of said first-mortgage bonds, without preference by reason of priority of issue, or of any cause or thing whatsoever, upon the trusts, conditions, and agreements, and to and for the uses and purposes hereinafter expressed, namely:

Article 1. The party of the first part hereby agrees to pay all taxes and assessments upon the granted premises, and not to suffer

any lien or attachment superior to the lien created by these presents to be enforced thereon, and not to commit or suffer any waste thereof.

Article 2. The proceeds of said first-mortgage bonds from time to time issued and negotiated shall be deposited, one-half with the United States Trust Company of New York, and one-half
34 with the Boston Safe Deposit and Trust Company of Boston, or, in whole or in part, with such other trust companies as the directors of the party of the first part may designate, and the party of the second part, its successor or successors in said trust, approved, to the credit of the party of the first part, and shall be used for the purpose of constructing, equipping, maintaining and operating said Western division of the Atlantic and Pacific Railroad Company and for the payment of the interest maturing on such bonds until the completion of said division to the Pacific coast, or until such party of the second party shall, by a contract with any other road, form a through line, properly equipped to the Pacific coast, and for one year thereafter. The party of the first part agrees to complete said Western division or form such through line, as aforesaid, with due and reasonable diligence; to furnish to the party of the second part during construction, monthly accounts, showing the application of said proceeds, and to permit, at any and all reasonable times, an inspection of its books and vouchers by the party of the second part, its agents or attorneys.

But the party of the second part and the holder of said bonds shall not be obliged to make any inquiry in respect to, or be in any manner answerable for, the application or misapplication of said proceeds.

Article 3. The party of the first part shall, at its discretion from time to time sell the lands received from the United States under said first-named act of Congress, and any and all acts subsequent thereto, to aid in the construction of said railroad and telegraph, and included in this mortgage, at just and reasonable prices, either wholly for cash or partly upon credit, secured by a lien upon the land sold, and the party of the second part, its successor or
35 successors in said trust, shall upon demand from time to time release the lands thus sold to the party of the first part, or to the purchaser thereof, as may be deemed most advisable; provided, however, that the appointment of the land commissioner shall be made by the party of the first part with the approval of the party of the second part, which approval shall be inferred if no objection is made within thirty days after notice of the intended appointment; that the party of the first part may remove said commissioner at any time, and shall remove him upon request of the party of the second part for cause shown; that said commissioner shall certify, upon request of the party of the second part, that the prices at which any and all said lands are sold from time to time are just and reasonable, and such certificate shall, for the protection of the party of the second part, be sufficient evidence of the facts therein stated. And provided also that the net cash proceeds of said lands shall be deposited with, and all notes and securities taken therefor shall be

held subject to the control of the United States Trust Company of New York, trustee, or its successor or successors in said trust, and used solely—

First. To provide for any deficiency in the net earnings for the payment of interest on the first-mortgage bonds; and

Second. To provide for any deficiency in the net earnings for the payment of interest on the second-mortgage bonds.

Third. For the payment of the principal and interest of any advances, made by the Atchison, Topeka and Santa Fe Railroad Company, and the St. Louis and San Francisco Railway Company, to the Atlantic and Pacific Railroad Company, under their contract indorsed upon this mortgage.

36 Fourth. For the purchase and cancellation of the first-mortgage bonds, whenever they can be obtained by public advertisement, at not exceeding one hundred and ten per cent. and interest.

Provided, however, that the bonds hereby secured may be received at par and accrued interest in payment for any and all of said lands, and when so received shall be forthwith cancelled. And the party of the second part shall also release upon demand, from time to time, to the party of the first part, its successors or assigns, other lands, buildings or property of any kind included in this mortgage which may be sold or exchanged without impairing the efficiency of the said railroad and telegraph; provided, however, that in case of sale the net proceeds thereof be paid to the party of the second part, its successor or successors in said trust, and applied as above, or used by the party of the first part to replace the property sold, and that the party of the first part shall, upon demand, from time to time execute such deeds or mortgages as may be necessary to extend the lien created by these presents to the new property thus acquired by purchase or exchange.

Article 4. Until default, as hereinafter described, in the principal or interest of said first-mortgage bonds, or of any of the agreements and conditions herein declared to be kept and performed by the party of the first part, said party shall possess, operate, maintain and enjoy the railroad and telegraph composing said Western division, and all the franchises, rights and property of every kind with the appurtenances included in this mortgage, and collect, receive and use the rents, tolls, issues, income and profits thereof.

Article 5. If there shall be any default in the payment of
37 the interest of the bonds hereby secured, or in any of the agreements or conditions to be kept and performed by the party of the first part, and such default continues during six consecutive months, or if there shall be any default in the payment of the principal of said bonds, then and at any time thereafter during the continuance of such default, and for the purpose of foreclosing this mortgage, the party of the second part, its successor or successors in said trust, may personally or by its, his or their attorney or agent, enter upon, take, possess, maintain, and operate said railroad and telegraph and all franchises, property and appurtenances of every description belonging or pertaining to said Western divis-

ion, and make any necessary alterations in and additions thereto, and collect and receive the rents, tolls, issues, income and profits thereof, and shall sell and dispose of said lands and land grants; and, after paying all taxes, assessments and liens superior to the lien created by these presents, and all proper expenses of construction, operating and maintaining said railroad and telegraph, and of selling and disposing of said lands and land grants, including the compensation of said trustee, shall apply the remainder as follows, namely:

First. To the payment of interest on said first-mortgage bonds.

Second. To the payment of the principal of said bonds, if the same is then due, or if the holders of one-third in amount of said bonds outstanding shall elect that the same shall then be considered due; but, in case said principal is due, or elected to be considered due the said remainder shall be applied to payment of interest and principal without preference.

Third. If said principal is not due or elected to be consid-
38 ered due as aforesaid, then the net proceeds of the land grant shall be applied as provided in article 3, and the net proceeds of the railroad and telegraph, after payment of interest on all bonds in the order of preference, and of all other interest-bearing indebtedness pertaining to said Western division, shall be applied to a sinking fund for the purchase and cancellation of the said first-mortgage bonds at not exceeding par and accrued interest, and for the ultimate payment of said last-named bonds. And, if the earnings of said railroad and telegraph, after payment of expenses of operating and maintaining the same, and all proper charges, are sufficient to pay the interest on the bonds hereby secured, as the same falls due, and all arrearages of interest on said bonds have been fully paid, the trustee or trustees having said possession as aforesaid, shall surrender and restore the railroad and telegraph with all the rights, franchises and property of every kind pertaining to said Western division, and all additions thereto and extensions thereof, and, reserving all funds which should be retained and applied under article 3, shall deliver up all moneys, bills, accounts, claims and demands of every name and nature pertaining to said Western division, and all branches thereof, to the party of the first part, its successors or assigns, who shall possess and enjoy the same, subject, however, to the provisions of this mortgage; provided, however, that any default may be waived by the written assent thereto of a majority in interest of the bonds outstanding; but waiver of any previous default shall not affect the rights of the parties upon any default subsequently happening. And the provisions of both articles 5 and 6 are subject to this proviso.

Article 6. If there shall be any such default as described
39 in article 5, and the same is not waived as provided in the same article, then, and at any time thereafter during the continuance of such default, the party of the second part, its successor or successors in said trust, may, and upon demand of the holders of one-fourth in amount of said first-mortgage bonds outstanding, with indemnity for expenses liable to be incurred, shall, with or without

entry, sell the said franchises, rights of way, railroad, telegraph, lands, land grants, shops, depots, buildings, structures, bridges, viaducts, rolling stock, tools, machinery, supplies and all property of every description then composing and pertaining to said Western division, at public auction, free and discharged from all said trusts, first publishing notice of the time and place of said sale in one or more daily newspapers in each of the cities of Boston, New York, St. Louis, Chicago and San Francisco, not less than three times a week for six consecutive weeks next preceding the time appointed, and shall execute and deliver to the purchaser or purchasers at such sale *and* good and sufficient deed or deeds in the law for the same in fee-simple; which sale and conveyance made as aforesaid, shall be a perpetual bar at law and in equity to the party of the first part, and all persons claiming through, by or under the said party. The party of the second part, its successor or successors in said trust, may purchase at said sale; and no other purchaser shall be liable for the application or misapplication of the purchase-money, or be under any obligation to inquire into the necessity, expediency or authority for any such sale. And the net proceeds of such sale, after deducting all proper charges and expenses, shall be applied without preference to the payment of the principal and interest of the first-mortgage bonds hereby secured; and any surplus then remaining
40 shall be paid to the party of the first part, its successors or assigns, or to such person or corporation as may be lawfully entitled to receive the same.

Article 7. If the party of the first part shall pay the principal and interest of all the first-mortgage bonds secured hereby which may be issued, according to the tenor thereof, this mortgage and all of said bonds shall be void, but otherwise of full effect and virtue.

Article 8. The party of the first part, its successors and assigns, shall, from time to time, and at all times hereafter, and as often as thereunto requested by the party of the second part, its successor or successors in said trust, execute, acknowledge and deliver all such further deeds, conveyances and assurances in the law for the better assuring unto said trustee, and its successor or successors in the trust hereby created, upon the trusts herein expressed, the lands, land grants, railroad, telegraph equipments and appurtenances hereinbefore mentioned, or intended so to be, now and hereafter composing or pertaining to said Western division, and all additions thereto and extensions thereof, as by the said trustee, its successor or successors in said trust, or by its, his or their counsel learned in the law, shall be reasonably advised or required.

Article 9. The present or any future trustee may resign upon three months' notice in writing to the party of the first part, its successors or assigns, and to the holders of record of the bonds hereby secured, and may be removed at any time by a vote of a majority in interest of the holders of all said bonds outstanding at a meeting of the bondholders, attested by a written statement of such vote signed by the persons so voting, and may be removed at any time by the party of the first part, its successors or assigns, with
41 the written assent of the holders of one-fourth in amount of all said bonds outstanding; and any vacancy in the trustee-

ship hereby created, occasioned by the dissolution, death, resignation, removal, incapacity or refusal to act of the present or any succeeding trustee, may be filled by appointment made by the party of the first part,, it successors or assigns, with the approval of the majority in interest of the bondholders present or represented by proxy at a meeting held for that purpose, and such action may be had in anticipation of and before the actual happening of a vacancy. And, if the vacancy is not filled as aforesaid before the expiration of thirty days after the same has occurred, any justice of the Supreme Court of the United States may, upon the application of the party of the first part, its successors or assigns, or of any holder or holders of the first-mortgage bonds hereby secured, to the amount at par of one million dollars, or a less amount, if so many are not outstanding, appoint one or more persons or corporations to fill said vacancy.

And the act of appointment made in any of the ways aforesaid, and the acceptance on the part of the appointee, shall vest in such appointee all the estates, rights, titles, properties, interests and and powers before vested in his or its predecessor under this mortgage, and upon the trusts, agreements and conditions, and to and for the uses and purposes therein declared. Nevertheless, the present and any and all future trustees hereunder, by the acceptance of said trust, severally covenant and agree for themselves, their successors and administrators respectively, that they will execute, acknowledge and deliver, each to his or its respective successor or
successors in said trust, from time to time, and at all times as
42 often as requested thereunto by the party of the first part,
its successors and assigns, or by the holders of said bonds to the amount of one million dollars, or a less amount if so many are not outstanding, such deeds, conveyances and assurances in the law for the better assuring to such successor or successors the said estates, rights, titles, properties, interests and powers as counsel learned in the law may reasonably advise or require. Meetings of the bondholders may be called by either of the parties hereto, or by holders of said bonds amounting at par to one million dollars, or a less amount if so many are not outstanding, or by any committee chosen at a previous meeting, by publishing notice of the time and place of meeting in one or more newspapers in the cities of Boston, New York, St. Louis and San Francisco, twice each week for six successive weeks prior to the time of said meeting. And, in all meetings of bondholders, holders of record, and persons exhibiting proof satisfacfory to said meeting that they are *bona fide* holders of said bonds, shall be entitled in person, or by attorney, to vote in proportion to the amounts held by them.

Article 10. The present trustee, its successor or sucessors in said trust, may, in case of necessity, employ agents, attorneys or servants in the discharge of said trust, and the just and reasonable charges of said trustee and its agents, attorneys and servants shall be paid by the party of the first part. The present trustee, its successor and successors in said trust, shall not be liable for any error of judgment or mistake of fact made by it or any of them in good faith, and

shall not be liable for any error of judgment or mistake of fact, or for any act or thing whatsoever done, suffered or neglected by its or their agents, attorneys, servants or employés selected in good
43 faith in the discharge of said trusts. And, if at any time there shall be two or more trustees joined in the said trusts, neither shall be in any manner answerable for the acts of the other.

In witness whereof, the Atlantic and Pacific Railroad Company has caused its corporate seal to be affixed hereto, and these
[SEAL.] presents to be signed by its president, and attested by its secretary; and the United States Trust Company of New York, in token of its acceptance of the foregoing trusts, has caused its corporate seal to be affixed hereto, and these presents to be signed by its president, and attested by its secretary, the day and year first above written.

ATLANTIC AND PACIFIC RAILROAD COMPANY,
By THOMAS NICKERSON, *President.*

Attest: S. W. REYNOLDS, *Secretary.*

UNITED STATES TRUST COMPANY OF NEW YORK,
[SEAL.] By JOHN A. STEWART, *President.*

Attest: J. S. CLARK, *Secretary.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } ss:

On this third day of August, A. D. 1880, before me, Levy C. Wade, a notary public in and for said county of Suffolk, per-
44 sonally appeared Thomas Nickerson and S. W. Reynolds, known to me to be, respectively, in the order named, president and secretary of the above-named Atlantic and Pacific Railroad Company, and made oath that they are respectively such president and secretary; that, by order of the board of directors of said company, they signed, attested and sealed with said company's seal the foregoing instrument as above appears, and acknowledged the same to be the free act and deed of said company.

[NOTARIAL SEAL.] LEVI C. WADE.

STATE OF NEW YORK, *City and County of New York,* } ss:

On this ninth day of August, A. D. 1880, before me came John A. Stewart, with whom I am personally acquainted, who, being by me duly sworn, says that he resides in said city: that he is the president of the United States Trust Company of New York; that he knows the corporate seal of said corporation, and that the seal which is affixed to the foregoing instrument is the corporate seal of the said corporation, and was affixed thereto by authority of the board

of trustees of said corporation; and that he signed the same as president of said corporation by the like authority.

[NOTARIAL SEAL.] HENRY L. THORNELL,
Notary Public, New York Co.

EXHIBIT B.

Whereas, the St. Louis and San Francisco Railway Company, the Atlantic and Pacific Railroad Company, and the Atchison, Topeka and Santa Fe Railroad Company duly executed an agreement under seal, dated January 31, 1880, wherein among other things, they agreed that the railroad of the St. Louis and San Fran-
45 cisco Railway Company, and the railroad of the Atchison, Topeka and Santa Fe Railroad Company, and the Western division of the railroad of the Atlantic and Pacific Railroad Company, and such of their branches and leased lines as may be necessary for the purpose, shall be operated by the respective companies as an uninterrupted, continuous, through line of railroad to and from the Mississippi and Missouri rivers and the Pacific coast, for and during the term of thirty (30) years, from the first day of July in the present year, and afterwards until the first day of October, A. D. 1910:

Now, therefore, in consideration of said agreement, and of one dollar to us in hand paid, the receipt of which is hereby acknowledged, the St. Louis and San Francisco Railway Company, and the Atchison, Topeka and Santa Fe Railroad Company, do severally covenant and agree with the Atlantic and Pacific Railroad Company and the United States Trust Company of New York, trustee in the within mortgage for the benefit of the holder of the first-mortgage bonds secured thereby, that, if at any time after twelve months following the completion of the Western division of the said company in the within mortgage mentioned, or after twelve months after the Atlantic and Pacific Railroad Company shall, by a contract with any other road, have formed a through line to the Pacific coast, its earnings should prove insufficient to pay all coupons on said bonds as they mature, they will contribute, ratably, to the earnings, hereinafter described, for the purpose of paying and cancelling the same from their respective earnings upon all business received from and delivered to said Western division, by and from their lines of road
46 as above set forth, such sum as may be necessary to make up the deficiency of the earnings of the said Atlantic and Pacific Railroad Company, and the amount required to pay such coupons, but not exceeding twenty-five per cent. (25 per cent.) of the gross amount of their said described earnings respectively during the six months, ending on the first days of October and April, preceding the due date of such coupons.

In witness whereof, the said St. Louis and San Francisco Railway Company and the Atchison, Topeka and Santa Fe Railroad Company have severally caused their corporate seals to be at-
[SEAL.] tached hereto, and these presents to be signed by their respective presidents and attested by the secretary of the

first-named and the assistant secretary of the last-named company, on this first day of July, A. D. 1880.

ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY,
[SEAL.] By E. F. WINSLOW, *President.*

Attest:
C. LITTLEFIELD, *Secretary.*

ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,
[SEAL.] By T. JEFFERSON COOLIDGE, *President.*

Attest:
GEO. L. GOODWIN,
Assistant Secretary.

47 And thereafter and on, to wit: the 10th day of January, 1896, there was an order duly made and entered of record in the said cause appointing a receiver of the property and franchises of the Atlantic and Pacific Railroad Company, which said order is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO:

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting for the Trial and Hearing of Causes Arising under the Constitution and Laws of the United States.

UNITED STATES TRUST COMPANY, of New York, Complainant,
vs.
THE ATLANTIC AND PACIFIC RAILROAD COMPANY *et al.*, Defendants. } No. 1122.

Order Appointing Receiver.

Now on this 10th day of January, A. D. 1896, comes the complainant, The United States Trust Company of New York, by Neill B. Field, one of its solicitors; and also come the defendants, except the defendant, The Boston Safe Deposit and Trust Company, by their respective solicitors, and thereupon, upon the record in this cause, comes on for hearing the application of The United States Trust Company of New York for the appointment of a receiver herein, which application is consented to by the defendants, The Atlantic and Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railroad Company, The St. Louis and San Francisco Rail-
48 way Company, and the receivers of the property and franchises of said three last-named corporations, The Mercantile Trust Company, defendant herein, not consenting, and the same having been heard by the court, and the court being now fully advised in the premises—

It is now hereby ordered, adjudged and decreed, that Charles W. Smith be and he hereby is appointed receiver of all and singular

the lands, tenements and hereditaments of the said Atlantic and Pacific Railroad Company covered by the mortgage sought to be foreclosed herein, and also all personal estate thereof, including all its railroad tracks, rights of way, sidings, structures, depot grounds, station-houses, engine-houses, car-houses, freight-houses, wood-houses, sheds, watering places, workshops, machine shops, bridges, viaducts, culverts, fences and fixtures, together with its leases, rights under lease, rents from hired lands or hired railroads, and all its locomotives, tenders, cars, carriages, coaches, trucks, and other rolling stock, its machinery, tools, scales, turn-tables, rails, wood, coal, oil, fuel, equipment, furniture and material of every name, nature and description; and all its stocks, bonds and obligations, choses in action, accounts and rights under contracts now owned or possessed by the said defendant railroad company, covered by the mortgage sought to be foreclosed herein, together with the corporate rights, immunities and franchises, and all of the tools, fares, freights, rents, income and profits covered by said mortgage; and that the said receiver be and he is hereby authorized and directed to take possession of all and singular the railroads and properties above described, or above referred to, wherever situated or found, and to continue the operation of the said railroad, and every part or portion thereof,
49 and to run, manage and operate the said railroad, and every part or portion thereof, and such other railroads as the said defendant railroad company owns or holds, controls or operates under lease, contract, arrangement or otherwise, as heretofore run and operated, or which have been, or are being operated by, for or in the interest of the said Atlantic and Pacific Railroad Company, and to conduct the business and occupation of a common carrier of passengers and freight; and to discharge all public and governmental duties obligatory upon said corporation or upon any other corporation whose lines of road are now in the possession of or operated by the said Atlantic and Pacific Railroad Company, and to preserve the said property in proper condition, and repair the same so that it may be safely and advantageously used, and to protect the same, and to employ such persons and make such payments and disbursements as may be needful and proper in so doing.

It is further ordered, That the said receiver, within the next thirty days, file with the clerk of the court a proper bond with sureties, to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of his duties, and to account for all funds given into his hands according to the orders of this court.

Each and every of the officers, attorneys, agents or employés of the said Atlantic and Pacific Railroad Company, and all other persons or corporations are hereby required to turn over and deliver to such receiver, or his duly constituted representatives, any and all railroad property, books of account, vouchers, deeds, leases, contracts, bills, notes, accounts, moneys, stocks, bonds or obligations, or other property in his or their hands and in his or their con-
50 trol; and each and every of such attorneys, officers, agents, employés, persons or corporations are hereby required and

commanded to obey and conform to such orders as may be given them from time to time by such receiver, or his duly constituted representatives, in conducting the operations of such property, and in discharge of his duties as such receiver.

And it is further ordered, adjudged and decreed, that the said defendant, its agents, officers and servants, and all other persons be, and the same are hereby restrained and enjoined during the pendency of this action from interfering with, transferring, selling, or disposing of any of the property of the said defendant railroad company, or from taking possession of or in any manner whatever interfering with the same or any part thereof, or from interfering in any manner whatever with the possession or management of any of said property over which the receiver is hereby appointed or from interfering in any manner to prevent the discharge of his duties or from the operation of the said property under the order of this court.

And the said receiver is hereby fully authorized to operate the said Atlantic and Pacific railroad and to manage the property of the said corporation in such manner as will in his judgment produce the most satisfactory results, consistent with the discharge of the public duties imposed thereon; and to collect and receive all of the income therefrom, and all of the debts due the said company of all kinds, and for such purpose is hereby vested with the full power in his discretion to employ and discharge, and to fix the compensation of such officers, agents, attorneys, managers, superintendents and employés as are necessary to aid in the dis-
51 charge of his duties, except that the said receiver shall continue in service all the officers and employés of the receivers heretofore appointed by this court in the case of The Mercantile Trust Company *vs.* The Atlantic and Pacific Railroad Company *et al.*, numbered 999 on the calendar of this court, in the respective positions they occupy, for at least one month after qualification and entrance upon duty by said receiver, provided that for special cause, approved by the court, any or either of said officers or employés may be sooner removed or discharged; and provided further, that this exception shall not prevent discharge or dismissal from service, of any officer or employé for neglect of duty or disobedience of orders or regulations given or prescribed; and he shall have power, with the sanction of the court, to redeem any and all of the securities of the company now pledged as securities on loans of money.

The said receiver is fully authorized and empowered to institute and prosecute such suits that may be necessary in his judgment for the proper protection of the property and trusts hereby vested in him, and to likewise defend all such actions instituted against him as such receiver, and also to come in and aid in the prosecution and defense of any of the suits now pending against the Atlantic and Pacific Railroad Company, the prosecution or defense of which will in his judgment be necessary for the proper protection of the property placed in his charge.

It is further ordered, adjudged and decreed, that out of the moneys

that shall come into his hands, as such receiver, from the operation of the said railroad properties, or otherwise, he shall:

First. Pay all current expenses incident to the creation and administration of this trust and to the operation of the said railways or railroads and properties.

52 Second. Pay all sums due or to become due connecting or intersecting lines of railways, arising from the interchange of business and for track service of other railroads used by said defendant in the operation of its lines and traffic, and car-mileage balances and all amounts now due from the defendant on its road or properties, constituting part of the said system, for taxes and assessments upon the property, or any part thereof.

Third. To pay all sums which are now due and have accrued since the first day of July, 1893, for material or supplies used in the operation or maintenance of said defendant railroad company; and also all sums or amounts due for wages to officers, agents or employés of the defendant railroad company accruing since the first day of July, 1893.

Fourth. To pay all liabilities or damages which may have been or shall be incurred by any person or corporation who may have become sureties of the said defendant company on stay, supersedeas or cost bonds, or upon any garnishment proceedings, or bonds of other like character without regard to the date of said bonds.

It is further ordered, adjudged and decreed, that the appointment of the said Charles W. Smith as such receiver, and the powers by this order conferred upon him, shall be and become operative, in force and vested from the first day of February, A. D. 1896; that the transfer of the property from the receiver in the Mercantile Trust Company case to the receiver hereby appointed, is made upon the express condition to which the United States Trust Company of New York expressly assents, that this court may in this case,

53 before all priorities and allowances which it could have enforced in the said Mercantile Trust Company case if there had been no change in the receivership.

N. C. COLLIER,
Associate Justice of the Supreme Court of the Territory of New Mexico, and Judge of the Second Judicial District Court Thereof.

And thereafter, on to wit: the 10th day of June A. D. 1897, there was filed in the office of the clerk of the said court, in said cause, an intervening petition of the Territory of New Mexico, as to Valencia county taxes for 1896, which said petition is in the words and figures following, to wit:

In the District Court, Second Judicial District, Territory of New Mexico.

THE UNITED STATES TRUST COMPANY OF NEW YORK }
vs.
ATLANTIC AND PACIFIC RAILROAD COMPANY *et al.* }

To the Honorable Neeham C. Collier, associate justice of the supreme court of said Territory and judge of said district court:

Your petitioner, The Territory of New Mexico, respectfully shows to your honor the following:

1. Certain property of the Atlantic and Pacific Railroad Company was omitted in the assessment of taxable property within the county of Valencia in the Territory of New Mexico for a series of years beginning with the year 1892 and ending with the year 1896, and was not put upon the assessor's books for said years, and the assessor in said county having failed to list the same or place it upon his roll before it was returned to the county commissioners, the
54 collector of taxes in said county, after the tax-list for the year 1896 had been delivered to him, proceeded to list, value and assess such property in the manner that the assessor might have done, and to enter such assessment in his tax-list and to assess taxes thereon as hereinafter in detail more fully set forth.

2. The said collector, for the year 1892, entered upon his tax-list as aforesaid an additional assessment of property of said railroad company, of which additional assessment a copy is attached hereto and hereby declared to be a part hereof from which it appears that the total valuation of said property amounted to $620,390. The tax regularly levied by the proper authorities upon all property within said county for the year 1892, for territorial and county purposes, was at the rate of twenty-one and nine-tenths mills, so that the amount of tax upon the valuation aforesaid amounts to $13,586.54, one-half of which became delinquent upon the first day of January, 1893, and the other half on the first day of July, 1893, said halves bearing interest respectively, from said respective dates at the rate of twenty-five per centum per annum.

3. The said collector, for the year 1893, entered upon his tax-list as aforesaid an additional assessment of property of said railroad company, of which additional assessment a copy is attached hereto and hereby declared to be a part hereof, from which it appears that the total valuation of said property amounted to $620,390. The tax regularly levied by the proper authorities upon all property within said county for the year 1893, for territorial and county purposes, was at the rate of thirty-seven and five-tenths mills, so that the amount of tax upon the valuation aforesaid amounts to
55 $23,064.63, one-half of which became delinquent upon the first day of January, 1894, and the other half on the first day of July, 1894, said halves bearing interest respectively, from said respective dates at the rate of twenty-five per centum per annum.

4. The said collector, for the year, 1894, entered upon his tax-list

as aforesaid an additional assessment of property of said railroad company, of which additional assessment a copy is attached hereto and hereby declared to be a part hereof, from which it appears that the total valuation of said property amounted to $626,399. The tax regularly levied by the proper authorities upon all property within said county for the year 1894, for territorial and county purposes, was at the rate of thirty-six and seventy-five hundredths mills, so that the amount of tax upon the valuation aforesaid amounts to $23,020.16, one-half of which became delinquent upon the first day of January, 1895, and the other half on the first day of July, 1895, said halves bearing interest respectively from said respective dates at the rate of twenty-five per centum per annum.

5. The said collector, for the year 1895, entered upon his tax-list as aforesaid an additional assessment of property of said railroad company, of which additional assessment a copy is attached hereto and hereby declared to be a part hereof, from which it appears that the total valuation of said property amounted to $626,399. The tax regularly levied by the proper authorities upon all property within said county for the year 1895, for territorial and county purposes, was at the rate of thirty-six and seventy-five hundredths mills, so that the amount of tax upon the valuation aforesaid amounts to $23,020.16, one-half of which became delinquent upon the first day of January, 1896, and the other half on the first day of July,
56 1896, said halves bearing interest respectively from said respective dates at the rate of twenty-five per centum per annum.

6. The said collector, for the year 1896, entered upon his tax-list as aforesaid an additional assessment of property of said railroad company, of which additional assessment a copy is hereto attached and hereby declared to be a part hereof, from which it appears that the total valuation of said property amounted to $626,399. The tax regularly levied by the proper authorities upon all property within said county for the year 1896, for territorial and county purposes, was at the rate of thirty-eight and seventy-five hundredths mills, so that the amount of tax upon the valuation aforesaid amounts to $24,272.96, one-half of which became delinquent upon the first day of January, 1897, and bears interest from that date at the rate of twenty-five per centum per annum; and the other half will become delinquent on the first day of July, 1897, and will thereafter bear interest at said rate of twenty-five per centum per annum.

7. The receiver of the property of the said railroad company, heretofore appointed in this cause refuses to pay the said taxes or any part thereof and disputes the validity of the same upon the ground that all of the property so listed, valued and assessed as aforesaid is exempt from taxation by virtue of the provision contained in the second section of an act of Congress, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which became a law on the 27th day of July, 1866; but your petitioner charges that the said exemption from taxation extends only

to the right of way granted to said railroad company on each
57 side of its railroad, where it may pass through the public domain, and does not extend to any improvements made upon the said right of way, nor to the said right of way itself where it passes through land not included in the public domain.

Your petitioner therefore prays that the said taxes so levied as aforesaid may be declared by decree of this court to be a lien upon said property of said railroad company, now in the hands of the said receiver, and that the said receiver may be ordered and directed to pay the said taxes, together with the interest thereon, to the collector of taxes in and for said county of Valencia, and that your petitioner may have such other and further relief as equity may require and to your honor shall seem meet.

F. W. CLANCY,
Solicitor for Petitioner.

And thereafter, on, to wit: the 10th day of June, A. D., 1897, there was duly made and entered of record, the same being in vacation, an order as to intervention of Territory of New Mexico *in re* Valencia county taxes which said order is in the words and figures following, that is to say:

In the District Court, Second Judicial District, Territory of New Mexico.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
ATLANTIC AND PACIFIC RAILROAD COMPANY *et al.*

Upon reading and filing the intervening petition of the Territory of New Mexico, and after hearing F. W. Clancy, Esq., solicitor for said intervening petitioner, it is ordered by the court that the said Territory of New Mexico be and hereby is given leave to intervene
58 herein and that the parties hereto who have appeared herein are required to show cause before the judge of this court at the court-house, in the county of Bernalillo, on the 15th day of June, 1897, at ten o'clock in the forenoon of said day, why the prayer of said petitioner should not be granted, service of copies of said petition and of this order to be made not later than the 10th day of June, 1897, upon the solicitor for complainant, the solicitor for the Mercantile Trust Company and the solicitor for the said receiver, such service to be made in accordance with the usual practice of this court.

N. C. COLLIER, *Judge.*

And thereafter, on to wit: the 23rd day of June, A. D. 1897, there was filed in the office of the clerk of the said court in this cause, joint and several pleas of United States Trust Company and C. W. Smith, receiver, A. & P. R. R. Co., which said pleas are in the words and figures following, to wit:

TERRITORY OF NEW MEXICO:

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting to Hear and Determine Causes Arising under the Constitution and Laws of the United States.

UNITED STATES TRUST COMPANY OF NEW YORK, Plaintiff,
vs.
ATLANTIC AND PACIFIC RAILROAD COMPANY *et al.*

In the matter of the intervening petition of the Territory of New Mexico filed in this cause.

The joint and several pleas of the United States Trust Company and C. W. Smith, receiver of the Atlantic and Pacific Railroad
59 Company, appointed by this court in the above-entitled cause, to the intervening petition of the Territory of New Mexico for the collection of taxes alleged to be due in Valencia county.

First Plea.

The United States Trust Company, complainant herein, and C. W. Smith, the receiver of the property of the Atlantic and Pacific Railroad Company, by protestation, not confessing or acknowledging all or any part of the matters and things in the intervening petition of the Territory of New Mexico to be true, in such manner and form as the same are therein set forth and alleged, do plead thereto in relation to the amount of taxes alleged to have been levied or assessed for a series of years commencing with the year, A. D. 1892, and ending with the year 1896, against the Atlantic and Pacific Railroad Company, or its property, and particularly in relation to the amount of taxes alleged to have been levied and assessed for the year 1892, against said company or its property, in the sum of $13,586.54, the following facts in bar thereof, and in bar of the right of the Territory of New Mexico to receive or collect any amount of the taxes mentioned or described in said intervening petition for any of the years mentioned therein, and particularly said sum of $13,586.54, or any part thereof, taxes so alleged to have been levied and assessed for the year 1892, as aforesaid:

That the Atlantic and Pacific Railroad Company was incorporated by the act of Congress of the United States of America, approved July 27, 1866, and that under and by virtue of said act and prior to the year 1885, the Atlantic and Pacific Railroad
60 Company constructed and built, and has ever since maintained in the county of Valencia, Territory of New Mexico, 93,458 miles of main line of railroad track upon the right of way granted to it under said act of Congress, over and through lands that at that time belonged to the Government of the United States, and over and upon a right of way through lands in said county belonging to private individuals or corporations or associations, which said right of way was and is of the extent of 200 feet in width

under and by virtue of said act of Congress, both through the lands belonging to the United States, as well as through the lands belonging to others.

That about 58 miles of said right of way in said county and Territory was and is through land which was not Government land, but which belonged to private individuals or corporations, and was acquired by the railroad company under and through the right conferred upon it by said act of Congress. That the balance of said right of way was and is over and upon public lands of the United States. That in addition to the main track built upon said right of way, the railroad company built and has maintained on said right of way, through Valencia county, in said Territory, 3,433 miles of sidings, making a total amount of trackage in Valencia county in said Territory in the year 1892 of 96,891 miles; all of which was upon the right of way granted to and acquired by the Atlantic and Pacific Railroad Company under said act of Congress. That in addition to said trackage, the Atlantic and Pacific Railroad Company in 1892 had in Valencia county, in said Territory, upon its right of way and as a part thereof, station grounds for station building, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, which were, have been and

61 are now stations upon said line of railroad is said county and Territory named as follows:

Rio Puerco, San Jose, El Rito, Laguna, Cubero, McCarty's, Grants and Bluewater.

That upon said right of way and station grounds, prior to 1892, and up to January 4, 1893, the Atlantic and Pacific Railroad Company had constructed, and permanently attached to its right of way and station grounds, ties and rails sufficient to make a railroad track to operate its trains upon, and all necessary station buildings, depots, machine shops, switches, side tracks, turn-tables and water tanks; and it also had permanently constructed thereon, bridges and culverts of iron, stone and wood; and it also built, established and maintained over, along and upon its said right of way, a grade for its tracks and side tracks, which was and is built in a permanent manner, and that the ties for its tracks were and are firmly imbedded in this grade which consists of earth, gravel, cinders and stone; and that the rails for its main and side-tracks are spiked to and firmly fastened to its ties so embedded in said grade so that the same form a substantial and permanent railroad track and side tracks for the operation of the railroad trains of the Atlantic and Pacific Railroad Company, consisting of both passenger and freight trains, thereon; that the bridges and culverts built and maintained by the railroad company upon said right of way in said county and Territory, are a part of said main track and side track; and that the buildings at the stations above described, are such as were and are necessary for the operation of the said railroad by said railroad company, and are permanently attached and fixed to said station grounds and right of way.

62 That in the year 1892 the Atlantic and Pacific Railroad Company had in said county and Territory, in addition to the

property hereinabove described, a large amount of land, which it then claimed belonged to it as a part of the lands granted to it by said act of Congress, and it also had some personal property subject to taxation therein.

That on and after the first day of March, 1892, and within the time required by law, one, A. M. Bergere, the then duly qualified and acting assessor of Valencia county, Territory of New Mexico, for the year, A. D., 1892, pretended and claimed to assess, and to enter upon the assessment-roll for said county and Territory, for said year, the assessment of all the property of the Atlantic and Pacific Railroad Company in Valencia county, in said Territory, subject to taxation, and for the purpose of making such assessment in conformity with the requirements of law, made and entered upon the assessment-roll, for said year, in said county, certain entries relative to the Atlantic and Pacific Railroad Company and its property, both real and personal; a true, perfect, correct and complete copy of said assessment-roll, in so far as it shows any entries for the year 1892, of or concerning the Atlantic and Pacific Railroad Company, or its property, is filed herewith, marked "Receiver's Exhibit No. 1," and the same by reference thereto is made a part of this plea.

That thereupon the said county assessor, upon a leaf in the assessment-roll opposite to the leaf in said roll containing the assessment of the Atlantic and Pacific railroad, and its property, as shown by Receiver's Exhibit No. 1, entered and extended the various levies of taxes for said county for said year 1892, against said property and each item thereof; a full, true and complete copy of the
63 taxes levied against the Atlantic and Pacific Railroad Company and its property, and each item thereof, in said county, by said assessor, for said year A. D. 1892, as extended by him upon the page of said assessment-roll opposite the page containing the assessment itself, is shown by the paper herewith filed, marked "Receiver's Exhibit No. 2," which by reference thereto is made a part hereof.

That on the 5th day of September, 1892, the board of county commissioners of Valencia county, Territory of New Mexico, endorsed on the back of the assessment and tax roll so made by said assessor, as aforesaid their approval and warrant to the collector, a true and correct copy of which is shown on the back of the paper marked "Receiver's Exhibit No. 2," and to which reference is hereby made.

That on the 5th day of September, A. D. 1892, the said assessor duly verified his assessment and tax roll, a true copy of which verification is shown endorsed on the back of the paper marked "Receiver's Exhibit No. 2," and made a part hereof by reference thereto.

That on the 5th day of September, A. D. 1892, one Tranquilino Luna, now deceased, and who was then sheriff and *ex officio* collector of taxes for said county, endorsed upon the copy of the assessment-roll and tax-roll on that day delivered to him by the assessor a receipt, a copy of which is shown by the endorsement on the back

of the paper marked "Receiver's Exhibit No. 2," and made a part hereof by reference thereto.

That the assessor in the year 1892, in accordance with law, made three assessment-rolls which contained the assessment of the property both real and personal, of Valencia county, in said Territory, for that year, with the taxes levied and extended thereon
64 against each item of property assessed, in the manner shown by Receiver's Exhibits 1 and 2, and one of said assessment-rolls was delivered to the territorial auditor, and one of said assessment-rolls was retained in the office of said assessor, and the other of said assessment-rolls was delivered to the said Tranquilino Luna, sheriff and *ex officio* tax collector as aforesaid.

That Receiver's Exhibits Nos. 1 and 2 filed herewith are copies of that portion of the assessment and tax-roll delivered by the assessor of said county to the said late Tranquilino Luna, as said sheriff and *ex officio* tax collector, and which in anywise described any property belonging to the Atlantic and Pacific Railroad Company, or against which any tax was extended or levied for the year A. D. 1892, and such exhibits show exactly everything that was done in that year in the way of assessing the property of said railroad company, and of levying or extending a tax against the same, as the same appears upon the original assessment-roll.

That on or about the — day of ——, 1892, the Atlantic and Pacific Railroad Company paid to the said late Tranquilino Luna as sheriff and *ex officio* collector of taxes, the sum of $43.90, being the amount of tax levied upon the personal property of the Atlantic and Pacific Railroad Company, which was assessed upon said assessment-roll in the hands of said Luna in the column therein headed "Value of cattle" in the sum of $2,004.90, as will appear from said Receiver's Exhibit No. 1.

That there was no personal property of any kind, nature or description belonging to the said railroad company in Valencia county, which was subject to taxation in that county for the year A. D. 1892, which was not included in the assessment of $2,004.99 aforesaid, and upon which the said tax of $43.90 was levied
65 and paid; and that during said year, the railroad company neither had owned, or had in its possession or under its control, any cattle in Valencia county, or any cattle subject to taxation in that county.

That on or about the — day of ——, 1892, the Atlantic and Pacific Railroad Company paid to the late Tranquilino Luna, as sheriff and *ex officio* collector of Valencia county, the further sum of $1,045.74, being the tax levied against that portion of its land grant which was and is situated in Valencia county in said Territory, and which, upon said assessment-roll, under the head of "Value of lands," was assessed at the sum of $31,529.61, as appears by reference to said Receiver's Exhibit, No. 1; true and correct copies of the receipts given by the said Tranquilino Luna are filed with this plea, marked Receiver's Exhibits 3 and 4, reference to which is hereby made and the same made a part of this plea.

That no other or further assessment was ever made by any officer of Valencia county in said Territory in the year 1892, of any prop-

erty belonging to the Atlantic and Pacific Railroad Company other than that shown by Receiver's Exhibit No. 1, and no other or further levy or extension of taxes against such assessment was ever made during said year, for said year or any other year, save and except that shown by Receiver's Exhibit No. 2.

That the entire rate of taxation in Valencia county for the year 1892, including each, all and every tax authorized to be levied, was and is the sum of $2.19 on each $100 of assessed valuation.

That the assessment and tax rolls of said county and Territory for said year, retained by said assessor, and the one sent to the
66 territorial auditor, are substantially duplicates of the one delivered to the said Tranquilino Luna.

That in the year 1892 the officers having charge of such matters for the Atlantic and Pacific Railroad Company, made a return to the county assessor of said county of the property of said railroad company situated in said county and Territory, and the return so made of the property is shown by Receiver's Exhibit No. 11, which is a true copy, and which by reference thereto is made a part hereof.

That the other property returned by the taxing officers of said railroad company for said year, was and is the property upon which the taxes are paid as above stated, and as shown by Receiver's Exhibits 3 and 4.

That the only pretended or claimed levy of taxes against any property of the Atlantic and Pacific Railroad Company for the said year, remaining unpaid, is that shown to have been extended and levied upon the "right of way" of the Atlantic and Pacific Railroad Company which was and is assessed at the lump sum of $327,103, upon the assessment-roll for said year, together with the further sums placed in said assessment-roll in the column headed "Value of cattle," opposite the words contained in the column in said assessment-roll headed "Name of property-owners," save and except as hereinafter stated.

The names and sums referred to are as follows:

Rio Puerco, 1st	$1,888 00
El Rito, 3rd	541 00
Laguna, 4th	677 00
Cubero, 6th	2,145 00
McCarty's, 7th	682 00
Grants, 8th	1,383 00
Btuewater, 9th	3,150 00
67 San Jose, 2nd	1,316 00

All of which is shown by the said assessment and levy of taxes upon said assessment-roll, as will fully appear by reference to said Receiver's Exhibits No. 1 and No. 2, and the endorsements thereon.

That prior to the first day of January, 1894, the Atlantic and Pacific Railroad Company paid each and every item of taxes assessed and levied against it or its property in said Valencia county, Territory of New Mexico, save and except only that levied against the assessed value of its "right of way," and that levied against the figures set opposite the names of the stations as hereinabove set forth and described.

Receiver's Exhibit No. 1.

Assessment-roll for Valencia County, 1892.

	Name of property-owner.	Prec'ct No.	Real estate.										Value of land.	Val. of improvements.	Total value of land & improvements.	Value of cattle.	Val. of per. property.	Deductions.
			Fraction or other description.	Section.	T'nship.	Range.	No. acres.	Val. per acre.	Lots.	Block.	Name of town or city.	Add'on.						
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19																		
20																		
21																		
22	Atlantic & Pacific R. R. Co																	
23	Grant'd lands as per list on file						157,648 04	.20					$31,529 61		$31,529 61	$2,004 99		
24	Personal property as follows																	
25	Rio Puerco, 1st															1,888 00		
26	El Rito, 3d															541 00		
27	Laguna, 4th															677 00		
28	Cubero, 6th															2,145 00		
29	McCarty's, 7th															682 00		
30	Grant's, 8th															1,383 00		
31	Bluewater, 9th															3,150 00		
32	San Jose, 2d															1,316 00		
33	Total value of right of way														327,103 00			
34																		

RECEIVER'S EXHIBIT No. 2

Territory of New Mexico for 1892

	Fixed by assessor.	Fixed by county commissioner.	Fixed by ter. board equalizat'n.	Final assessed value.	Territorial tax.				County tax.							City tax.			Total tax.
					For territorial purposes.	Territorial institutions.	Capitol bonds.	Insane asylum.	School tax.	General tax.	County additional.	Interest, funded debt, '82 and '83.	Sinking-fund bonds, '82 & '83.	Interest, funded debt, '85.	Interest, funded debt, '89.	Interest, current-expense bonds.	Road and bridge.	Unpaid interest, funded debt.	Cattle indemnity.	Total.	
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32																					
33		388,184 40		388,184 40	2,523 21	388 18	38 86	19 40	1,164 55	970 46	194 09	560 03	776 37	62 10	861 76	116 46	194 09	601 08		8,501 24
34																					

Dollar, cent, and mill ($ c. m.) marks omitted.

69

70 (The following on a printed blank is pasted in the back of the book.)

Oath of Assessor.

I, A. M. Bergere, assessor of the county of Valencia, Territory of New Mexico, do solemnly swear that during the whole time allowed by law to make this assessment, I have made diligent inquiry and examination to ascertain all the property within said county, subject to taxation, and that I have assessed it on the assessment book equally and uniformly to the best of my judgment, information and belief, at its full cash value, and that I have faithfully complied with all the duties imposed upon the assessor by the revenue laws of the Territory, and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward, so help me God.

A. M. BERGERE, *Assessor.*

Sworn to and subscribed before me this 5th day of September, A. D. 1892.

CARLOS BACA,
Clerk of the Board of County Commissioners.

Office of the board of county commissioners, Valencia county.

TERRITORY OF NEW MEXICO, }
County of Valencia. }

At a regular session, held on the 5th day of September, A. D. 1892.

It is ordered by the board of county commissioners of the said county: That the preceding assessment-roll, and each and every assessment therein contained, as originally returned and as-
71 sessed or as shown therein to have been revised and corrected by the board, be and the same is hereby approved.

And that a tax of 11.25 mills upon each dollar of taxable property for county purposes, and of three mills on the dollar for school purposes, and 7.65 mills for various territorial funds, to wit:

For territorial purposes fixed by the act of the Legislative Assembly, approved February 26, 1891, 6.50 mills on the dollar; for territorial institutions, act of February 28, 1889, 1 mill on the dollar; for interest on the capitol bonds, .10 mills on the dollar; insane asylum bonds, .05 mills on the dollar. Total levy for all territorial purposes, 7.65 mills on the dollar; cattle indemnity fund $\frac{50}{100}$ mills on the dollar on the appraised value of all cattle; is hereby levied upon all the property therein returned assessed liable to taxation. And it is further ordered that the assessor of the county enter the several said rates of taxes upon the tax-roll for the year 1892, and that upon the delivery of the tax-roll to the county collector, the county clerk shall charge said collector with the aggregate amount of said several taxes as provided by law.

To the sheriff and *ex officio* collector of the county of Valencia, in said Territory, Greeting:

You are hereby commanded, in accordance with the laws of said Territory, in such cases made and provided, to collect all territorial, county, school, city and all other taxes above enumerated and specified, levied on the citizens of said county, and non-resident property-owners whose property may have been assessed in your county, and all taxes assessed upon property within said county as appears from the tax-list of said county for the year 189–, being the foregoing tax-list, and the delinquent tax-lists of said county for
72 previous years, and also that you collect all interest due on delinquent taxes as provided by the laws of said Territory.

In witness whereof we have hereunto set our hands and caused the seal of said board to be hereunto affixed, attested by the clerk of said board, this 5th day of September, A. D. 1892.

SILVESTRE MIRABAL,
Chairman of Board.
NESTOR JARAMILLO,
JUAN JOSE BENAVIDES,
Commissioners.

Attest: CARLOS BACA,
Probate Clerk and ex Officio Clerk of the Board of County Commissioners.

SEPTEMBER 5, A. D. 1892.

TERRITORY OF NEW MEXICO, }
County of Valencia. }

Received of A. M. Bergere, assessor of said county, the tax-lists or assessment-rolls of said county for the year 1892, which amounts to $47,005.00, territorial, school and county funds, viz:

For territorial purposes	$13,910 85
" " institutions	2,140 13
" interest on capitol bonds	214 01
Insane asylum bonds	107 00
For school fund	6,420 40
General tax (county)	5,350 32
County additional	1,070 06
Interest on bonds '82 and '83	5,253 00
" " '85	342 42
" " '89	4,750 09
73 Interest on current expense bonds	642 03
Road and bridge fund	1,070 06
Unpaid interest due 1892	3,317 20
Cattle indemnity fund	136 17
Total	$47,005 00

Witness my hand this 5th day of September, A. D. 1892.

TRANQUILINO LUNA,
Sheriff and ex Officio Collector in and for said County.

6—458

74 RECEIVER'S EXHIBIT No. 3.

Duplicate.

Auditor's No. 701, series 2.
Recorded in Nov., 1892.

Atlantic & Pacific Railroad Company (Western division) to Tranquiliana Luna, sheriff and *ex officio* collector, Dr.

Valencia county, N. M.

1892.

Nov.	1	To amount of taxes claimed to be due and payable to the tax collector of Valencia county, N. M., from the Atlantic and Pacific Railroad Company, for the year 1892, as follows (not including right of way or land grant):		
		Personal property, section tools, etc.... $315 99		
		Office, telegraph, and station furniture. 1,689 00		
		Total $2,004 99		
		Tax at $2.19	.....	$43 90

Examined by— — —. Correct: — —. Approved: — —.

Approved: C. N. STERRY, *General Attorney.* Approved: — —, *Local Auditor.* Approved: — —, *General Manager.*

Charge to acc't.

No.	Letter.	Division.	Amount.
....	.....	Tax	$43 90
....	.....	.....	.....
....	.....	.....	.....
....	.....	.....	.....
....	.....	.....	.....
Common....	.....		$43 90

Received Dec. 5, 1892, from Atlantic & Pacific Railroad Company forty-three $\frac{90}{100}$ dollars, in full payment of above account.
(Signed in duplicate.)
SOLOMON LUNA,
Sheriff and ex Officio Collector, Valencia County.

75 RECEIVER'S EXHIBIT No. 4.

Duplicate.

Paid by check —. No. 1703—9.

Atlantic & Pacific Railroad Company, land department, to Tranquiliana Luna, sheriff and *ex officio* collector, Valencia Co., Dr.

Los Lunas, New Mexico.

1892.

Nov.	2	To amount of taxes claimed to be due and payable to the tax collector of Valencia county, New Mexico, for the year 1892, from the land department of the Atlantic and Pacific Railroad Company for that portion of its land grant situated in Valencia county, New Mexico, amounting to 157,648.04 acres..... ...	.....	$1,045 74

Examined by— — —.

Approved: — —, *Auditor.* Approved: — —, *Land Commissioner.* Approved: — —.

Charge to—	$	Cts.
Taxes	1,045	74
Common	1,045	74

Received Dec. 5, 1892, from Atlantic & Pacific Railroad Company one thousand and forty-five and $\frac{74}{100}$ dollars, in full payment of above account.

(Signed in duplicate.)

SOLOMON LUNA,
Sheriff and ex Officio Collector,
Valencia County.

76 RECEIVER'S EXHIBIT No. 11.

List of real estate of the Atlantic and Pacific Railroad Company, situate in the county of Valencia and Territory of New Mexico, listed by the said company for the fiscal year 1892, under protest, and with the express understanding that said company by making said list does not in any manner waive its right to exemption from taxation under the act of Congress whereby it was created, and asserts that all of the real estate herewith listed, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, and the structures placed thereon or attached thereto for the purpose of operating and maintaining said road and transacting and carrying on its business, are and were by the second section of said act of Congress, expressly exempted from taxation within the territories of the United States:

The right of way for said railroad, one hundred feet on each side thereof, commencing at station 249–13, the point where said railroad enters said county of Valencia from the northeast, and at the dividing line between the county of Valencia and the county of Bernalillo on the east, thence in a westerly direction 93.458 miles to the northern boundary line of said county of Valencia, at station 5247, together with all the ties, iron and steel rails, fish-plates, bolts, spikes, grades, cuts, fills, bridges, culverts and other material constituting and composing the road-bed, track and railroad of said company, together with the telegraph line erected upon and constructed over said right of way, $327,103.00.

All necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water
77 stations, together with the fixed and permanent improvements placed thereon and attached thereto for the purpose of operating and maintaining said railroad, to wit:

Rio Puerco	$1,888 00
San Jose	541 00
El Rito	677 00
Laguna (Indian reservation)	2,145 00
Cubero	682 00
McCarty's (Indian reservation)	1,383 00

Grant's	3,150 00
Bluewater	1,316 00
	$11,782 00
Total value of right of way	327,103 00
Grand total	$338,885 00

TERRITORY OF NEW MEXICO, *County of Bernalillo,* } ss:

I, C. N. Sterry, do solemnly swear that I am the general attorney of the Atlantic and Pacific Railroad Company, and that, to the best of my knowledge and belief, the above and foregoing contains a full, true and correct statement of all the real estate owned, claimed by, or in the possession or under the control of the Atlantic and Pacific Railroad Company in the county of Valencia, Territory of New Mexico, not already listed; that I am informed that the same and each and every part and parcel thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, and the structures, buildings and improvements placed thereon for the purpose of operating and maintaining said road and carrying on the business thereof, are, and were by the said act of Congress incorporat-
78 ing said company, exempt from taxation within the county of Valencia.

C. N. STERRY.

Subscribed and sworn to before me this 19th day of April, A. D. 1892.

[SEAL.] KARL A. SNYDER,
Notary Public.

That subsequent and on the fourth day of June, 1894, in an action of foreclosure pending in this court, wherein The Mercantile Trust Company was plaintiff and The Atlantic and Pacific Railroad Company was defendant, and in which receivers, who were the predecessors in office of the said C. W. Smith, receiver herein, had been duly appointed, one Solomon Luna, who was then and at that time the duly appointed, acting and qualified collector of said county of Valencia, made and filed a petition in this court, in said cause, with permission of this court, and of which the following is a true and correct copy:

TERRITORY OF NEW MEXICO, *County of Bernalillo,* } *ss*:

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting to Hear and Determine Causes Arising under the Constitution and Laws of the United States.

THE MERCANTILE TRUST COMPANY, Complainant,
vs.
ATLANTIC AND PACIFIC RAILROAD CO., Defendant.

To the Hon. Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial district court thereof, in chancery sitting:

79 *Petition of Solomon Luna.*

Your petitioner, Solomon Luna, sheriff and *ex officio* collector of taxes and licenses for the county of Valencia in the Territory of New Mexico, respectfully shows unto your honor that in accordance with the laws of the Territory of New Mexico in such cases made and provided the taxing office of the county of Valencia aforesaid, did levy and assess the property of the defendant, The Atlantic and Pacific Railroad Company, situated and being in said county, taxes for territorial and county purposes for the year 1892, amounting to the sum of $8,501.24.

Your petitioner further shows unto your honor that in like manner, a tax amounting to the sum of $14,706.16 was levied and assessed upon the property of the Atlantic and Pacific Railroad Company for the year 1893.

Your petitioner further shows unto your honor that at the times prescribed by law in each of the said years, 1892 and 1893, the tax-roll for the county of Valencia aforesaid, duly certified as required by law, was placed in the hands of your petitioner and your petitioner thereby became charged with the duty of collecting from the said Atlantic and Pacific Railroad Company, the taxes so levied and assessed against it, and your petitioner is advised by counsel and believes and therefore charges the fact to be, that the levy and assessment of the said assessment of the said taxes created a lien upon all the property of the said defendant, The Atlantic and Pacific Railroad Company within the county of Valencia aforesaid, prior and superior to all other liens and incumbrances; which lien it was the duty of your petitioner to enforce by seizure of the property of the said defendant, The Atlantic and Pacific Railroad
80 Company, and sale thereof or sufficient amount thereof to satisfy the said taxes, together with interest and penalties which have accrued thereon.

Your petitioner further shows unto your honor that heretofore, to wit: on the — day of April, 189–, your petitioner being then and there about to proceed to the enforcement of the payment of the

said taxes so levied and assessed against the said defendant, The Atlantic and Pacific Railroad Company, the said defendant filed in this honorable court its bill of complaint, seeking to enjoin your petitioner from so enforcing the payment of said taxes, and while the said bill of complaint was pending and undetermined in this honorable court, and before your petitioner was able to proceed in the manner prescribed by law to the enforcement of the payment of said taxes, this proceeding by the Mercantile Trust Company was begun in this honorable court, and J. W. Rhinehart, John J. McCook and Joseph C. Wilson were on the 5th day of January, 1894, appointed by this honorable court, receivers therein, and under and by virtue of such appointment took possession of all of the property of said defendant; and now control and operate the same as such receivers under the orders of this honorable court.

Your petitioner further shows unto your honor that he is advised by counsel and believes and therefore charges the fact to be, that by reason of the appointment of the said receivers in this proceeding, your petitioner is prevented from proceeding in the manner prescribed by law to enforce the collection of the said taxes so levied and assessed against the said defendant, The Atlantic and Pacific Railroad Company, but your petitioner is likewise advised
81 that it is the duty of the said receivers to pay the said taxes out of any moneys in their hands belonging to the said defendant, but nevertheless, the said receivers deny their liability to pay the said taxes so levied and assessed, and have refused and still refuse to pay the same, although thereunto requested by your petitioner.

Your petitioner further shows unto your honor that it is impracticable to file with this petition, a copy of the tax-rolls of the county of Valencia, but your petitioner files herewith extracts therefrom showing the levy and assessment of said taxes against the defendant, The Atlantic and Pacific Railroad Company, and now here offers to produce when and where this honorable court shall direct, the original tax-rolls for the inspection of the said receivers if thereunto required.

Your petitioner shows unto your honor that it is the manifest duty of the said receivers to pay the said taxes so levied and assessed for the years 1892 and 1893, but inasmuch as the said receivers refuse to pay the same, your petitioner is without remedy except in this proceeding.

Wherefore, your petitioner prays that the said receivers may be ordered to pay to your petitioner, all unpaid taxes levied and assessed against the Atlantic and Pacific Railroad Company for the years 1892 and 1893, and that your petitioner may have such other and further relief in the premises as equity may require and to your honor may seem meet.

(Signed) SOLOMON LUNA,
Sheriff and ex Officio Collector of Taxes and Licences,
Valencia County, N. M.

(Signed) NEILL B. FIELD,
Solicitor for Petitioner.

82 TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Solomon Luna being first duly sworn, upon his oath deposes and says: That he has read the foregoing petition and knows the contents thereof; that the allegations therein are true of his own knowledge, except as to so much and such parts thereof as are made upon information and belief; and as to those allegations he believes the same to be true.

(Signed) SOLOMON LUNA.

Subscribed and sworn to before me this 2d day of June, A. D. 1894.

[SEAL.] (Signed) S. BURKHART,
Notary Public.

Filed in my office this 4th day of June, 1894.

O. N. MARRON, *Clerk.*

83

Territory of New Mexico, for 1892.

	City of Albuquerque 12.	City of Albuquerque 26.	Fixed by county.	Fixed by territorial board of equalization.	Final assessed value.	Territorial taxes.					County tax.							City tax.					Cattle indemnity.	Total tax.
						For territorial purposes.	Territorial tuition.	Capitol fund.	Insane asylum.	School tax.	General tax.	County additional.	Int'st funded debt '82, '83.	Interest funded debt '85.	Interest funded debt '89.	Interest current expense bonds.	Road and bridge.	Sinking fund bonds '82.	Unpaid interest, funded debt.				
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2																							
3																							
4			47,294 41																				
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10																							
11																							
12																							
13					388,184 40	2,523 21	388 18	38 86	19 40	1,164 55	970 46	194 09	560 03	62 10	881 76	116 46	194 09	776 37	601 68				8,501 24
14					388,184 40																		

1893.

	Territorial purposes.	Special debt 4th fiscal yr.	Normal schools.	Normal institute.	Branch agrt. exper. stations.	Casual deficit bonds interest.	Territorial institutions.	Cattle indemnity.	School fund.	General fund.	County additional.	Court fund.	Road and bridge.	Interest bonds '82, '83.	Interest bonds '85.	Interest bonds '89.	Unpaid interest, fund.	Interest current expense bonds.	Sinking fund.				
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27	2,349 84	881 19	176 24	19 58	97 91	97 91	685 37		723 28	979 10	195 82	1,958 20	195 82	881 19	1,253 25	1,762 38	979 10	254 98	1,174 92	14,706 18			
28																							
29																							
30																							
31																							
32																							
33																							
Tot.																							

Dollar, cent and mill ($ c. m.) marks omitted.

1—458

	Name of property-owner.	Precinct No.	Fraction or other description.	Section.	Township.	Range.	No. acres.	Val. per acre.	Lots.	Block.	Name of town or city.	Addition.	Value of land.	Value of improvements.	Total val. of land & improvements.	Value of cattle.	Value of personal property.	Deductions.
1	Atlantic & Pacific R. R.																	
2	Company																	
3	Granted lands as per																	
4	list on file						157,648 04	.20					$31,529 61		$31,529 61		$2,004 99	
5	Personal property as																	
6	follows:																	
7	Rio Puerco, first																1,888 00	
8	El Rito, second																541 00	
9	Laguna																677 00	
10	Cubero																2,145 00	
11	McCarty's																682 00	
12	Grant's																1,383 00	
13	Bluewater																3,150 00	
14	San Jose																1,316 00	
15	Total value of right of																	
16	way														327,103 00			

1893.

17	Atlantic & Pacific R. R.																	
18	Company																	Paid by co'nty
19	Granted lands as per																	commission'rs
20	list on file						169,167 48	.20					33,833 50				2,004 99	$16,916 75
21			Rio Puerco station										1,888 00					
22			San Jose										541 00					
23			El Rito										677 00					
24			Laguna										2,145 00					
25			Cubero										682 00					
26			McCarty's										1,383 00					
27			Grant's										3,150 00					
28			Bluewater										1,316 00					Final assessed
29			Total value of right of															value.
30			way												327,103 00			$391,640 24
31																		
32																		
33																		
Ttl.																		

THE UNITED STATES TRUST CO. OF NEW YORK ET AL. C.C.U.

85 That thereafterwards and on or about the 14th day of December, A. D. 1894, the said Solomon Luna filed in said cause his amended petition, a true and correct copy of which is as follows:

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

In the District Court of the Second Judicial District of the Territory of New Mexico, Sitting to Hear and Determine Causes Arising under the Constitution and Laws of the United States.

THE MERCANTILE TRUST COMPANY, Complainant, }
vs. }
THE ATLANTIC AND PACIFIC RAILROAD COMPANY, Defendant. }

To the Honorable Needham C. Collier, associate justice of the supreme court of the Territory of New Mexico and judge of the second judicial court thereof, in chancery sitting:

Amended Petition of Solomon Luna.

Solomon Luna, sheriff and *ex officio* collector of taxes and licenses for the county of Valencia, in the Territory of New Mexico, by leave of the court first had and obtained, amends his petition heretofore filed in this cause and reiterating and reaffirming all the allegations of his original petition herein, the said petitioner shows to the court that while it is true that the Atlantic and Pacific Railroad Company, by C. N. Sterry its general attorney, who at that time had charge for said company to look after the assessment and taxation of said company and its property, in the Territory of New Mexico, made and returned to the assessor of Valencia county, Territory of New Mexico,
86 the return set up in the answer of the said receivers herein, a copy of which is attached to and made a part of said answer, marked "Exhibit B," and while it is also true that there was accepted from the return so made to the said assessor the list of the real estate owned by the Atlantic and Pacific Railroad Company in the county of Valencia, Territory of New Mexico, which consisted entirely of the land granted by the Government of the United States to the Atlantic and Pacific Railroad Company, outside of its right of way in said county and Territory; it is also true that within what is described in the said "Exhibit B," as the right of way of the said Atlantic and Pacific Railroad Company, in the county of Valencia, the said company is the owner in fee-simple of a tract of land about 200 feet wide and about 60 miles long, that is to say; that your petitioner is informed and believes that the entire length of the main line of the Atlantic and Pacific Railroad Company in the county of Valencia, is 95.458 miles, and that as to about 33 miles of said length and no more, the lands covered by the said railroad in the said county of Valencia, in said Territory of New Mexico were part of the public domain at the time of the passage of the act incorporating the said railroad company, and as to all of the lands covered by the said railroad, except the said 33 miles,

the same and every part thereof was held in private ownership at the time of the passage of the said act incorporating the said Atlantic and Pacific Railroad Company; and your petitioner is informed and believes that the said Atlantic and Pacific Railroad Company acquired title thereto by gift, purchase or adverse possession under the provision of section 7, of the said act of incorporation, which title your petitioner is informed and believes is and was at the time of the assessment and taxation thereof, an
87 absolute fee-simple title, and the same and all improvements, thereon, are and were at said time, real estate, and subject to taxation as such in the Territory of New Mexico, and that no part thereof was or is exempt from such taxation.

Your petitioner is advised by counsel and believes, and therefore charges the fact to be, that as to so much of the said track of the said Atlantic and Pacific Railroad Company as traversed and crossed what was part of the public domain of the United States, the said Atlantic and Pacific Railroad Company acquired by section 2, of the said act of incorporation, an easement therein, which by the terms of the said act of incorporation was and is exempt from taxation in the Territory of New Mexico, but your petitioner is advised by counsel and believes, and therefore charges the fact to be, that while the said easement so acquired by virtue of the said grant was exempt from taxation in the Territory of New Mexico, the improvements and betterments thereof were and are no part of the said easement, and were not and are not exempt from taxation by the said provision of the said act of incorporation.

Your petitioner is further advised by counsel, and believes and so charges the fact to be, that by the laws of the Territory of New Mexico, the improvements of the said Atlantic and Pacific Railroad Company upon that portion of the public domain over and upon which the said easement was so acquired, are and were subject to taxation in the Territory of New Mexico, and your petitioner charges that the taxes levied and assessed upon the property of the said Atlantic and Pacific Railroad Company, in the county of Valencia, Territory of New Mexico, which your petitioner seeks to have paid in this proceeding, were and are levied upon and assessed
88 against the said property so subject to taxation as aforesaid, and the same were not nor was any part thereof levied or attempted to be assessed against the said easement of the said company which was so exempt by the said terms of the said act of Congress.

Your petitioner further shows unto your honor that the said taxing officers of the said county of Valencia, in the Territory of New Mexico, accepted a description of the said property, and the valuation thereof as fixed by the agents of the said Atlantic and Pacific Railroad Company, although the said description might have been made more definite and certain, and the said valuation was below the actual value of the said property of the said Atlantic and Pacific Railroad Company for the purposes of taxation, and your petitioner is advised that the said Atlantic and Pacific Railroad Company and these receivers are estopped to deny the sufficiency of the said de-

scription or the fairness of the said valuation; and that your petitioner is informed and believes and so charges the fact to be that the value of the road-bed of the said Atlantic and Pacific Railroad Company in the said county of Valencia, to which the company owns a fee-simple title, together with the value of the cuts and fills thereon and the cross-ties, rails, fish-plates, bolts and other improvements thereon, and annexed thereto, together with the improvements of a like nature affixed to the soil and used by the said company in connection with the said easement, is of the value, to wit: of not less than one million dollars, and the amount of taxes sought to be collected in this proceeding is much less than the fair and equitable amount of taxes which should be paid by the said Atlantic and Pacific Railroad Company.

Your petitioner is further advised by counsel that under
89 the provision of the laws of New Mexico in such cases made and provided, he is fully authorized and empowered to correct any mere clerical errors in the entries of said assessment upon the tax-rolls of the county of Valencia; and your petitioner hereby offers if required so to do, to correct any such errors as may be pointed out in the said entries, and your petitioner prays as in his original petition, and will ever pray, etc.

SOLOMON LUNA,
Sheriff and ex Officio Collector of Taxes and Licenses, Valencia County, New Mexico.

NEILL B. FIELD,
Solicitor for Petitioner.

TERRITORY OF NEW MEXICO, } ss:
County of Bernalillo, }

Solomon Luna, being first duly sworn, upon his oath deposes and says, that he has read the foregoing amended petition and knows the contents thereof, that the allegations therein contained are true of his own knowledge, except as to so much and such parts thereof as are made upon information and belief, and as to these allegations he believes the same to be true.

SOLOMON LUNA.

Subscribed and sworn to before me this 13th day of December A. D. 1894.

[SEAL.] FELIX H. LESTER,
Notary Public.

That thereupon the receivers named in said petition filed their certain pleas to said amended complaint, denying the right to recover the taxes so assessed for such year and that said pleas have been set down for argument in said cause, but have not yet
90 been heard or disposed of by the court, and that on the first day of February, A. D. 1896, C. W. Smith, herein was duly appointed successor in office as receiver of the property of the Atlantic and Pacific Railroad Company to the receivers named in said amended petition, and that he, the said C. W. Smith, is now, and

has been, such successor in office in said suit, as well as receiver appointed in the above-entitled cause.

That the said petitions are still pending and undisposed of in this court and involve the taxes sought to be recovered in this action for the years 1892 and 1893, alleged or claimed to be due from the receiver herein and the Atlantic and Pacific Railroad Company, to Valencia county, in the Territory of New Mexico.

That to each of said petitions of the said Solomon Luna there *was* filed by the predecessors in office to the said C. W. Smith, receiver herein, pleas which are still undisposed of in said cause.

That no further or other assessment was ever made, or attempted to be made by any officer or officers in Valencia county, in the Territory of New Mexico, for the year 1892 than that heretofore set forth and stated until in the year 1896, when the tax collector of Valencia county that year claimed and pretended, after receiving the tax-rolls of said county for 1896, to enter up the assessment stated and set forth in paragraphs 1 and 2 of the intervening petition filed herein.

That all of the taxes levied, as alleged in the 1st and 2nd paragraphs of said intervening petition, and claimed to have been levied by the collector or any other officer in the county of Valencia and Territory of New Mexico for the year 1892, against the property of the Atlantic and Pacific Railroad Company, were and are based upon the assessment on the superstructure placed on the right
91 of way of the Atlantic and Pacific railroad, as hereinbefore stated and set forth, and upon no other assessment whatever, and was and is the same assessment made by the assessor in said county, as hereinbefore stated and set forth, save and except only that the assessment alleged in the 1st and 2nd paragraphs of the intervening petition did not pretend to be made upon the actual right of way, but only upon its superstructure.

All of which said several matters and things hereinabove stated and set forth said United States Trust Company of New York and said C. W. Smith, as such receiver, jointly and severally aver to be true, and they each jointly and severally plead the same to the said intervening bill of complaint in so far as the same seeks to recover for taxes alleged to be due from either the Atlantic and Pacific Railroad Company or C. W. Smith, its receiver, for the year 1892, and they and each of them jointly and severally humbly crave the judgment of this court whether they be compelled to make any other or further answer to the said bill.

C. N. STERRY,
KARL A. SNYDER,
Solicitors and Counsel for Each of the Defendants Joining Herein.

Second Plea.

The United States Trust Company of New York, and C. W. Smith, the receiver of the Atlantic and Pacific Railroad Company for their second plea to the intervening petition filed herein, by protestation,

not confessing or acknowledging all or any part of the matters
92 and things in said intervening petition mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead thereto in relation to the amount of taxes alleged to have been levied and assessed for the year 1893 against the Atlantic and Pacific Railroad Company in the sum of $23,064.63, the following facts in bar thereto, and in bar to the right of the Territory of New Mexico to receive and collect said amount or any part thereof, from said receiver.

That some time in the year 1896, the then collector of Valencia county, in the Territory of New Mexico, pretended to make and levy the assessment and taxes pretended to be made and as alleged and shown by the allegations contained in paragraph 3 of the intervening petition, and the said collector was wholly without any authority in law or in equity to make said assessment and said levies by reason of the following facts:

That the Atlantic and Pacific Railroad Company was incorporated by the act of Congress of the United States of America, approved July 27, 1866, and that under and by virtue of said act, and prior to the year 1885, the Atlantic and Pacific Railroad Company constructed and built, and has ever since maintained in the county of Valencia, Territory of New Mexico, 93.458 miles of main line of railroad track upon the right of way granted to it under said act of Congress, over and through lands that at the time belonged to the Government of the United States, and over and upon a right of way through lands in said county belonging to private individuals or corporations or associations, which said right of way was and is of the extent of 200 feet in width, under and by virtue of said act of Congress, both through the lands belonging to the United States as well as through the lands belonging to others.

93 That about 58 miles of said right of way in said county and Territory was and is through land which was not Government land, but which belonged to private individuals or corporations, and was acquired by the railroad company under and through the rights conferred upon it by said act of Congress. That the balance of said right of way was and is over and upon public lands of the United States. That in addition to the main track built upon said right of way, the railroad company built and has maintained on said right of way through Valencia county, in said Territory, 3.433 miles of sidings; making a total amount of trackage in Valencia county in said Territory, in the year 1893, of 95.891 miles; all of which was upon the right of way granted to and acquired by the Atlantic and Pacific Railroad Company, under said act of Congress. That in addition to said trackage, the Atlantic and Pacific Railroad Company in 1893 had in Valencia county, in said Territory, upon its right of way and as a part thereof, station grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, which were, have been and are now stations upon said line of railroad in said county and Territory, named as follows:

Rio Puerco, San Jose, El Rito, Laguna, Cubero, McCarty's, Grant's, Bluewater.

That upon said right of way and station grounds, prior to 1893, and up to January 1, 1894, the Atlantic and Pacific Railroad Company had constructed, and permanently attached to its right of way and station grounds, ties and rails, sufficient to make a railroad track to operate its trains upon, and all necessary station buildings, depots, machine shops, switches, side tracks, turn-tables and water tanks; and it also had permanently constructed thereon
94 bridges and culverts of iron, stone and wood; and it also built, established and maintained over, along and upon its said right of way, a grade for its tracks and side tracks, which was and is built in a permanent manner, and that the ties for its tracks were and are firmly embedded in this grade, which consists of earth, gravel, cinders and stone; and that the rails for its main and side tracks are spiked to and firmly fastened to its ties so imbedded in said grade, so that the same form a substantial and permanent railroad track and side tracks for the operation of the railroad trains of the Atlantic and Pacific Railroad Company, consisting of both passenger and freight trains thereon; that the bridges and culverts built and maintained by the railroad company upon said right of way in said county and Territory, are a part of said main and side tracks; and that the buildings at the stations, above described, are such as were and are necessary for the operation of such railroad by said railroad company, and are permanently attached and fixed to said station grounds and right of way.

That in the year 1893, the Atlantic and Pacific Railroad Company had in said county and Territory, in addition to the property hereinabove described, a large amount of land which it then claimed belonged to it as a part of the lands granted to it by said act of Congress, and it also had some personal property subject to taxation therein.

That on and after the first day of March, 1893, and within the time required by law, one Franco Chavez y Armijo, the then duly qualified and acting assessor of Valencia county, Territory of New Mexico, for the year A. D. 1893, pretended and claimed to assess and to enter upon the assessment-roll for said county and Terri-
95 tory for said year, the assessment of all the property of the Atlantic and Pacific Railroad Company in Valencia county, in said Territory, subject to taxation, and for the purpose of making such assessment in conformity with the requirements of law, made and entered upon the assessment-roll for said year, in said county, certain entries relative to the Atlantic and Pacific Railroad Company and its property, both real and personal; a true, perfect, correct and complete copy of said assessment-roll, in so far as it shows any entries for the year 1893, of, or concerning the Atlantic and Pacific Railroad Company or its property, is filed herewith, marked "Receivers' Exhibit No. 5," and the same by reference thereto is made a part of this plea.

That thereupon, the said county assessor, upon a leaf in the assessment-roll opposite to the leaf in said roll containing the assessment

of the Atlantic and Pacific railroad and its property, as shown by Receivers' Exhibit No. 5, entered and extended the various levies of taxes for said county for said year A. D. 1893, against said property and each item thereof; a full, true and complete copy of the taxes levied against the Atlantic and Pacific Railroad Company and its property, and each item thereof, in said county by said assessor, for said year A. D. 1893, as extended by him upon the page of said assessment-roll opposite the page containing the assessment itself, is shown by the paper herewith filed, marked "Receivers' Exhibit No. 6," which by reference thereto is made a part hereof.

That on the 6th day of July, A. D. 1893, the board of county commissioners of Valencia county, Territory of New Mexico, endorsed on the back of the assessment and tax roll so made by said assessor as aforesaid, their approval and warrant to the collector, a true
96 and correct copy of which is shown on the back of the paper marked "Receivers' Exhibit No. 6," and to which reference is hereby made.

That on the 18th day of September, A. D. 1893, the said assessor duly verified his assessment and tax roll, a true copy of which verification is shown endorsed on the back of the paper marked "Receivers' Exhibit No. 6," and made a part hereof by reference thereto.

That on the 18th day of September, 1893, one Solomon Luna, who was then sheriff and *ex officio* collector of taxes for said county, endorsed upon the copy of the assessment-roll and tax-roll on that day delivered to him by the assessor, a receipt, a copy of which is shown by the endorsement on the back of the paper marked "Receivers' Exhibit No. 6," and made a part hereof by reference thereto.

That the assessor, in the year 1893, in accordance with law, made three assessment-rolls, which contained the assessment of the property both real and personal, of Valencia county, in said Territory, for that year, with the taxes levied and extended thereon against each item of property assessed, in the manner shown by the Receivers' Exhibits No. 5 and No. 6; and one of said assessment-rolls was delivered to the territorial auditor, one of said assessment-rolls was retained in the office of the said assessor, and the other of said assessment-rolls was delivered to the said Solomon Luna, sheriff and *ex officio* tax collector as aforesaid. That Receivers' Exhibits No. 5 and No. 6 filed herewith, are copies of that portion of the assessment and tax roll delivered by the assessor of said county to the said Solomon Luna, as said sheriff and *ex officio* collector, and which in anywise described any property belonging to the Atlantic and Pacific Railroad Company, or against which any tax was ex-
97 tended or levied for the year A. D. 1893, and such exhibits show exactly everything that was done in that year in the way of assessing the property of said railroad company, and of levying or extending a tax against the same, as the same appears upon the original assessment-roll in the hands of the said Solomon Luna.

That on or about the 28th day of December, 1893, and on or about the 19th day of May, 1894, the Atlantic and Pacific Railroad

Company paid to the said Solomon Luna, as sheriff and *ex officio* collector of taxes, the sum of $75.28, being the amount of tax levied on the personal property of the Atlantic and Pacific Railroad Company which was assessed on said assessment-roll in the hands of the said Luna, in the column headed "value of personal property," in the sum of $2,004.99, as will appear from said Receivers' Exhibit No. 5.

That there was no personal property of any kind, nature or description belonging to said railroad company in Valencia county, which was subject to taxation in that county for the year A. D. 1893, which was not included in the assessment of $2,004.99 aforesaid, and upon which the said tax of $75.28 was levied and paid.

That on or about the 28th day of December, 1893, and on or about the 19th day of May, 1894, the Atlantic and Pacific Railroad Company paid to the said Solomon Luna, as sheriff and *ex officio* collector of Valencia county, the further sum of $1,905.67, being the tax levied against that portion of its land grant which was and is situated in Valencia county in said Territory, and which, upon said assessment-roll under the head of "Value of land" in the hands of said Solomon Luna, was assessed at the sum of $33,833.50, as appears by reference to said Receivers' Exhibit No. 5; true and correct copies of the receipts given by the said Solomon
98 Luna are filed with these pleas marked Receivers' Exhibits Nos. 7, 8, 9 and 10, and by reference thereto made a part hereof.

Solomon Luna, as such sheriff and *ex officio* tax collector received said assessment-roll, with the taxes extended thereon, and the endorsement shown on the back, which so far as relates to the Atlantic and Pacific Railroad Company or its property, are shown by said Receivers' Exhibits No. 5 and No. 6, and the endorsements on the back thereof.

That no other or further assessment was ever made by any officer of Valencia county in said Territory in the year 1893, of any property belonging to the Atlantic and Pacific Railroad Company other than that shown by Receivers' Exhibit No. 5, and no other or further levy or extension of taxes against such assessment was ever made during said year, for said year or any other year, save and except that shown by Receivers' Exhibit No. 6.

That the assessment and tax rolls of said county and Territory for said year retained by said assessor, and the one sent to the territorial auditor, are substantially duplicates of the one delivered to the said Solomon Luna.

That no person or persons for or on behalf of the Atlantic and Pacific Railroad Company during the year 1893, or at any time since said time, has made any return of any property to the assessor of Valencia county in said Territory, for the purposes of taxation, save and except that there was returned by the proper officers of said railroad company to the assessor of Valencia county after the first of March, 1893, personal property of the value of $2,004.99,

and 169,167.48 acres of land belonging to its land grant, at
99 twenty cents per acre; and that the taxes paid as hereinabove stated and shown by Receivers' Exhibits Nos. 7, 8, 9 and 10, were all the taxes that were levied upon said personal property and said lands so returned as aforesaid.

That the only pretended or claimed levy of taxes against any property of the Atlantic and Pacific Railroad Company for said year remaining unpaid, is that shown to have been extended and levied upon the "right of way" of the Atlantic and Pacific Railroad Company which was and is assessed at the lump sum of $337,103.00, upon the assessment-roll for said year, together with the further sums placed in said assessment-roll in the column headed "Value of personal property" opposite the words contained in the column in said assessment-roll headed "Name of property-owners," save and except as hereinafter stated.

The names and sums referred to are as follows:

Rio Puerco	$1,888 00
San Jose	541 00
El Rito	677 00
Laguna	2,145 00
Cubero	682 00
McCarty's	1,383 00
Grant's	3,150 00
Bluewater	1,316 00

All of which is shown by the said assessment and levy of taxes upon said assessment-roll, as will fully appear by reference to said Receivers' Exhibits No. 5 and No. 6, and the endorsements thereon.

That prior to the first day of June, 1894, the Atlantic and Pacific Railroad Company paid each and every item of taxes assessed and levied against it or its property in said Valencia county, Territory of New Mexico, save and except only that levied against the
100 assessed value of its "right of way," and that levied against the figures set opposite the names of the stations as hereinabove set forth and described:

RECEIVER'S EXHIBIT No. 5.

Assessment-roll for Valencia County, 1893.

	Name of property-owner.	Prec'ct No.	Real estate. Fraction or other description.	Section.	Tp'ship.	Range.	No. acres.	Val. per acre.	Lots.	Block.	Name of town or city.	Value of land.	Val. of improvements.	Total value of land & improvements.	Value of cattle.	Val. of per. property.	Deductions.	Fixed by assessor.	Fixed by county commissioners.	Fixed by ter. board equalizat'n.	Final assessed value.
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22	Atlantic & Pacific R. R. Co.																		Rais'd by county commissioners.		
23	Grant'd lands as per list filed						169,167.48	.20				$33,833 50				2,004 99			$16,916 75		
24			Rio Puerco station													1,888 00					
25			San Jose													541 00					
26			El Rito													677 00					
27			Laguna													2,145 00					
28			Cubero													682 00					
29			McCarty's													1,383 00					
30			Grant's													3,150 00					
31			Bluewater													1,316 00					
32			Tot. val. right of way											327,103 00							391,640 24
33																					
34																					

Receiver's Exhibit No. 6

Territory of New Mexico for 1893.

	Territorial tax.								County tax.								City tax.						
	For territorial purposes.	Special deficit 44th fiscal year.	Normal schools.	Normal institutes.	Branch agricultural experiment station.	Casual deficit bonds, interest.	Territorial institutions.	Cattle indemnity.	School.	General.	Court fund.	County additional fund.	Road and bridge fund.	Interest, '82 & '83.	Interest, 1885.	Interest, 1885.	Unpaid interest.	Interest, current exp'nse bonds.	Sinking fund.	Total.	Amount due January 1st, 1894.	Amount due July 1st, 1894.	Penalty.	Total tax.
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32	2,349 84	881 19	176 24	19 58	97 91	97 91	685 37	.....	783 28	979 10	1,958 20	195 82	195 82	881 19	1,253 25	1,762 38	979 10	234 98	1,174 92	.....	7,353 09	7,353 09	.....	.....
33																								
34																								

Dollar, cent, and mill ($ c. m.) marks omitted.

103 *Oath of Assessor.*

I, Franco Chavez y Armijo, assessor of the county of Valencia, Territory of New Mexico, do solemnly swear that during the whole time allowed by law to make this assessment, I have made diligent inquiry and examination to ascertain all the property within said county, subject to taxation, and that I have assessed it on the assessment book equally and uniformly to the best of my judgment, information and belief, at its full cash value, and that I have faithfully complied with all the duties imposed upon the assessor by the revenue laws of the Territory, and that I have not imposed any unjust assessment through malice or ill will, nor allowed any one to escape a just and equal assessment through favor or reward, so help me God.

FRANCO CHAVEZ Y ARMIJO.

Sworn to and subscribed before me this 18th day of September, A. D. 1893.

M. LUNA,
Probate Clerk, etc.

TERRITORY OF NEW MEXICO, }
County of Valencia. }

OFFICE OF BOARD OF COUNTY COMMISSIONERS.

At a regular session, held on the 6th day of July, A. D. 1893.

It is ordered by the board of county commissioners of said county: That the preceding assessment-roll, and each and every assessment therein contained, as originally returned and assessed or as shown therein to have been revised and corrected by the board, be and the same is hereby approved.

104 And that a tax of 1.73 of one per cent. for county purposes, and of two mills on the dollar for school purposes, and of .05 mills on the dollar for court fund, and 1.10 per cent. for various territorial funds, to wit:

Fifty-one hundredths mills for cattle indemnity fund; for territorial purposes, 6 mills on the dollar; for special deficit levy for 44th fiscal year, 2.25 mills on the dollar; for normal school fund, $\frac{45}{100}$ mills on the dollar; for normal school institutes fund, $\frac{5}{100}$ mills on the dollar; for branch agricultural experiment stations fund, $\frac{25}{100}$ mills on the dollar; for casual deficit bonds interest fund, $\frac{25}{100}$ mills on the dollar; for territorial institutions fund, 1.75 mills on the dollar; for cattle indemnity fund on the appraised value of cattle, $\frac{50}{100}$ mills on the dollar, is hereby levied upon all the property therein returned assessed liable to taxation.

And it is further ordered that the county assessor extend the several said rates of taxes upon the tax-roll for the year 1893, and that upon the delivery of the tax-roll to the county collector the clerk of this board shall charge said collector with the aggregate amount of said taxes as provided by law:

To the sheriff and *ex officio* collector of Valencia county, in said Territory, Greeting:

You are hereby commanded, in accordance with the laws of said Territory, in such cases made and provided, to collect all the territorial, county, school, city and all other taxes above enumerated and specified, levied on the citizens of said county, and non-resident owners, whose property may have been assessed in your county, and all taxes assessed upon property within your county as appears from the tax-list of said county for the year 1893, being the foregoing tax-list, and the delinquent tax-lists of said county for the previous years, and also that you collect all interest due on
105 delinquent taxes as provided by the laws of said Territory.

In witness whereof we have hereunto set our hands and caused the seal of said board to be hereunto affixed, attested by the clerk of said board, this 6th day of July, A. D. 1893.

CARLOS BACA, *Chairman of Board.*
MANUEL S. SANCHEZ, *Commissioner.*

Attest: M. LUNA,
Probate Clerk and ex Officio Clerk of the Board of County Commissioners.

N. M., A. D. 189–.

TERRITORY OF NEW MEXICO, }
County of Valencia. }

Received of Maximiliano Luna, probate clerk and *ex officio* clerk of the board of county commissioners of said county, the tax-lists or assessment-rolls of said county for the year 1893, which amount to $63,035.89 territorial, school and county funds, viz:

For territorial purposes	$10,698 80
" special deficit levy for 44th fiscal year	4,012 80
" normal school fund	802 60
" normal school institutes fund	88 96
" branch agricultural experimental stations fund	446 13
" casual deficit bonds interest fund	446 13
" territorial institutions fund	3,121 13
" cattle indemnity fund	79 52
" school fund	3,566 63
" general fund	4,459 27
For court fund	8,917 36
106 " county additional fund	892 32
" road and bridge fund	892 32
For interest on bonds 1882 and 1883	4,012 80
" " " 1885	5,706 51
" " " 1889	8,025 16
" unpaid interest fund	446 13
" interest on current expense bond fund	1,070 35
" sinking fund	5,350 70

Witness my hand this 18th day of September, A. D. 1893.

SOLOMON LUNA,
Sheriff and ex Officio Collector in and for said County.

107 RECEIVER'S EXHIBIT No. 7.

(513.)

Auditor's No. 2675, series 10.
Recorded in January, 1894.

Atlantic and Pacific Railroad Company (Western division) to Solomon Luna, sheriff and collector, Dr.

Los Lunas, Valencia Co., N. M.

1893.

Dec.	28	To amount of taxes claimed to be due and payable to the tax collector of Valencia county, N. M., on the personal property of said company, for the first half of the year 1893, as follows:		
		Valuation, $2,004.99, at $3.755 per $100.00.	$75 28	
		First installment, ½	.....	$37 64

Examined by— D. E. S. Correct: —— ——. Approved: —— ——.

Approved: KARL A. SNYDER, *For General Attorney.*
Approved: T. R. GABEL, *General Superintendent.*
Approved: W. E. WALSH, *Auditor.*

Division.	Acc't No.	Passenger.	Freight.	Common.
Taxes ..	....	....	....	$37 64
.....	....	....	....	.....
.....	....	....	....	.....
.....	....	....	....	.....
.....	....	....	....	.....
.....	....	....	....	.....

$37.64.

Received ——, 189–, from the Atlantic and Pacific Railroad Company thirty-seven and $\frac{64}{100}$ dollars, in full payment of above amount.

SOLOMON LUNA, *Sheriff.*

108 RECEIVER'S EXHIBIT No. 8.

No. 309. Tax-roll 189-.
Precinct No. —. Page No. —.

Tax Receipt.

Office of sheriff and *ex officio* collector, Valencia county, N. M.

LOS LUNAS, NEW MEXICO, *Jan. 29th*, 1894.

Received from Atlantic and Pacific R. R. Co. nine hundred and fifty-two $\frac{84}{100}$ dollars, in payment of one-half of taxes levied in the year 1893, delinquent January 1, 1894, on the following-described property, to wit:

Distribution.	Description of real estate.
Territorial purposes	Granted lands as per list filed.
Special deficit 44th fiscal year	169,167.48 acres at 30c. per acre, $50,750.25.
Normal schools	
Normal institutes	
Branch agricultural experiment stations	
Casual deficit bond interest	
Territorial institutions	
Cattle indemnity fund	
Taos County sub-agricultural experiment station	
School fund	
General fund	
Court fund	
County additional fund	
Roads and bridges fund	
Interest on bonds 1882-'3	
Interest on bonds 1885	
Interest on bonds 1889	Real-estate valuation.
Unpaid interest fund	Personal property.
Interest on general expense bonds	Valuation.
Sinking fund	Total.
Penalty	Exemption.
Total $952 84	Subject to tax.

Value of cattle $—.

SOLOMON LUNA,
Sheriff and ex Officio Collector,
Per —— ——, *Deputy.*

109 RECEIVER'S EXHIBIT No. 9.

Triplicate.

Auditor's No. 2579, series 10.
Recorded in May, 1894.

Atlantic and Pacific Railroad Company (Western division) to Solomon Luna, sheriff and collector, Dr.

1894. Los Lunas, N. M.

May	19	To amount of taxes claimed to be due and payable to tax collector of Valencia county, New Mexico, from the Atlantic & Pacific Railroad Company, for the second half of the year 1893, upon the land grant in said county, as follows:		
		119,867.48 acres at 30c.....$50,750 25		
		Tax at 3.755 per $100.00	$1,905 67	
		Second installment.....	.....	$952 83

Examined by— D. E. S. Correct: — —. Approved: — —.

Approved: KARL A. SNYDER, *For General Attorney.* Approved: T. R. GABEL, *General Superintendent.* Approved: W. E. WALSH, *Auditor.*

Division.	Acc't No.	Passenger.	Freight.	Common.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Transfers Boston office.....				
.....	.....	.....	.....	....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Received July 10, 1892, from Atlantic & Pacific Railroad Company nine hundred and fifty-two and $\frac{83}{100}$ dollars, in full payment of above account.

SOLOMON LUNA,
Sheriff and Collector.

$952.83.

110 RECEIVER'S EXHIBIT No. 10.

(307.)

Original.

Auditor's No. 3577, series —.
Recorded in May, 1894.

Atlantic & Pacific Railroad Company (Western division) to Solomon Luna, sheriff and collector, Dr.

1894. Los Lunas, Valencia Co., N. M.

May	19	To amount of taxes claimed to be due and payable to the tax collector of Valencia county, N. M., upon the personal property of said company, in said county, for the second half of the year 1893, as follows:		
		Valuation, $2,004.99, tax at 3.755 per $100.00.....	$75 28	
		Second installment, ½.....	.....	$37 64

Examined by— — —. Correct: — —. Approved: — —.

Approved: KARL A. SNYDER, *For General Att'y.* Approved: J. T. E. PHILLIPS, *For Auditor.* Approved: T. R. GABEL, *General Superintendent.*

Charge to account.		
No.	Letter.	Amount.
Taxes	.....	$37 64
.....	.....	.....
.....	.....	.....
.....	.....	.....
....	.....	.....
Common .	.....	$37 64

Received July 10, 1894, from Atlantic & Pacific Railroad Company thirty-seven $\frac{64}{100}$ dollars, in full payment of above account.
(Signed in duplicate.)

SOLOMON LUNA,
Sheriff and Collector.

111 That the assessment and all of the proceedings had to charge said property with the taxes levied in 1893 are fully shown by Exhibits 5 and 6 hereto attached and made part of this plea by reference thereto.

That the property assessed by the said collector in the year 1896 was and is the same property so assessed by the said assessor for said county in the year 1893, as aforesaid, except as hereafter stated, and that the said taxes claimed by said intervening petition in the sum of $23,064.63 was pretended to be assessed by the collector in the allegations contained in the third paragraph of the intervening petition, as a tax levied and assessed upon the superstructure of the right of way and station grounds of the Atlantic and Pacific railroad, as hereinabove in this plea stated and set forth, and upon no other property whatsoever.

That about the 14th day of December, 1894, Solomon Luna, tax collector of Valencia county, in the Territory of New Mexico, filed an amended intervening petition in the foreclosure suit in this court then and now pending, wherein The Mercantile Trust Company of New York was plaintiff and The Atlantic and Pacific Railroad Company was defendant, and wherein the predecessors in office of the said C. W. Smith, receiver, were appointed receivers, seeking to recover the taxes in the intervening petition filed by the Territory of New Mexico, sought to be recovered in the allegations set forth and contained in the third paragraph of said intervening petition; a copy of said amended petition is set forth in the first plea herein, and by reference thereto is made a part hereof.

That thereupon the receivers named in said petition filed their certain pleas to said amended petition, denying the right to
112 recover the taxes so assessed for such year and that said pleas have been set down for argument in said cause, but have not yet been heard or disposed of by the court, and that on the first day of February, A. D. 1896, C. W. Smith, herein was duly appointed successor in office as receiver of the property of the Atlantic and Pacific Railroad Company to the receivers named in said amended petition, and that he, the said C. W. Smith, is now, and has been such successor in office in said suit, as well as receiver appointed in the above-entitled cause.

That the said petitions are still pending and undisposed of in this court and involve the taxes sought to be recovered in this action for

the years 1892 and 1893, alleged or claimed to be due from the receiver herein and the Atlantic and Pacific Railroad Company to Valencia county in the Territory of New Mexico.

That to each of said petitions of the said Solomon Luna there *was* filed by the predecessors in office to the said C. W. Smith, receiver herein, pleas which are still undisposed of in said cause.

That no further or other assessment was ever made, or attempted to be made by any officer or officers in Valencia county in the Territory of New Mexico for the year 1893 than that heretofore set forth and stated, until in the year 1896, when the tax collector of Valencia county that year claimed or pretended, after receiving the tax-rolls of said county for 1896, to enter up the assessment stated and set forth in paragraph 3 of the intervening petition filed herein.

That all of the taxes levied, as alleged in the third paragraph of said intervening petition, and claimed to have been levied by the collector or any other officer in the county of Valencia, and
113 Territory of New Mexico, for the year 1893, against the property of the Atlantic and Pacific Railroad Company, were and are based upon the assessment of the superstructure placed on the right of way and station grounds of the Atlantic and Pacific railroad, as hereinbefore stated and set forth, and upon no other assessment whatever, and was and is the same assessment made by the assessor in said county, as hereinbefore stated and set forth, save and except only that the assessment alleged in the third paragraph of the intervening petition did not pretend to be made upon the actual right of way, but only upon its superstructure.

All of which said several matters and things hereinabove stated and set forth, said United States Trust Company of New York and said C. W. Smith, as such receiver, jointly and severally aver to be true, and they each jointly and severally plead the same to the said intervening bill of complaint in so far as the same seeks to recover for taxes alleged to be due from either the Atlantic and Pacific Railroad Company or C. W. Smith, its receiver, for the year 1892, and they each of them jointly and severally humbly crave the judgment of this court whether they be compelled to make any other or further answer to said bill.

C. N. STERRY,
KARL A. SNYDER,
Solicitor and Counsel for Each of the Defendants Joining Herein.

Third Plea.

The United States Trust Company of New York, and C. W. Smith' the receiver of the Atlantic and Pacific Railroad Company
114 for their third plea to the intervening petition filed herein, by protestation, not confessing or acknowledging all or any part of the matters and things in said intervening petition mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead thereto in relation to the amount of

taxes alleged to have been levied and assessed for the year 1894 against the Atlantic and Pacific Railroad Company in the sum of $23,020.16, the following facts in bar thereto and in bar to the right of the Territory of New Mexico, to receive and collect said amount or any part thereof, from said receiver.

That the Atlantic and Pacific Railroad Company was incorporated by the act of Congress of the United States of America, approved July 27, 1866, and that under and by virtue of said act, and prior to the year 1885, the Atlantic and Pacific Railroad Company constructed and built, and has ever since maintained in the county of Valencia, Territory of New Mexico, 93.458 miles of main line of railroad track upon the right of way granted to it under said act of Congress, over and through lands that at that time belonged to the Government of the United States and over and upon a right of way through lands in said county belonging to private individuals or corporations or associations, which said right of way was and is of the extent of 200 feet in width, under and by virtue of said act of Congress, both through the lands belonging to the United States as well as through the lands belonging to others.

That about 58 miles of said right of way in said county and Territory was and is through land which was not Government land, but which belonged to private individuals or corporations, and was acquired by the railroad company under and through the right
115 conferred upon it by said act of Congress. That the balance of said right of way was and is, over and upon public lands of the United States. That in addition to the main track built upon said right of way, the railroad company built and has maintained on said right of way, through Valencia county, in said Territory, 3.433 miles of sidings; making a total amount of trackage in Valencia county in said Territory in the year 1892 of 96.891 miles; all of which was upon the right of way granted to and acquired by the Atlantic and Pacific Railroad Company under said act of Congress. That in addition to said trackage, the Atlantic and Pacific Railroad Company in 1894 had in Valencia county, in said Territory, upon its right of way and as a part thereof, station grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, which were, have been and are now stations upon said line of railroad is said county and Territory, named as follows:

Rio Puerco, San Jose, El Rito, Laguna, Cubero, McCarty's, Grant's, Bluewater.

That upon said right of way and station grounds, prior to 1892, and up to January 4, 1893, the Atlantic and Pacific Railroad Company had constructed, and permanently attached to its right of way and station grounds, ties and rails sufficient to make a railroad track to operate its trains upon, and all necessary station buildings, depots, machine shops, switches, side tracks, turn-tables and water tanks; and it also had permanently constructed thereon, bridges and culverts of iron, stone and wood; and it also built, established and maintained over, along and upon its said right of way, a grade for

its tracks and side tracks, which was and is built in a permanent
116 manner, and that the ties for its tracks were and are firmly embedded in this grade which consists of earth, gravel, cinders and stone; and that the rails for its main and side tracks are spiked to and firmly fastened to its ties so embedded in said grade, so that the same form a substantial and permanent railroad track and side tracks for the operation of the railroad trains of the Atlantic and Pacific Railroad Company, consisting of both passenger and freight trains, thereon; that the bridges and culverts built and maintained by the railroad company upon said right of way in said county and Territory, are a part of said main track and side tracks; and that the buildings at the stations above described, are such as were and are necessary for the operation of the said railroad by said railroad company, and are permanently attached and fixed to said station grounds and right of way.

That in the year 1894 the Atlantic and Pacific Railroad Company had in said county and Territory, in addition to the property hereinabove described, a large amount of land, which it then claimed belonged to it as a part of the lands granted to it by said act of Congress, and it also had some personal property subject to taxation therein.

That some time in the year 1896, the then collector of Valencia county, in the Territory of New Mexico pretended to make and levy the assessment and taxes pretended to be made and as alleged and shown by the allegations contained in paragraph 4 of the intervening petition, and the said collector was wholly without any authority in law or in equity to make said assessment and said levies by reason of the foregoing and following facts:

That some time in the year 1894, and after the first day of
117 March, A. D. 1894, the exact date of which these defendants are unable to state, the duly appointed, qualified and acting assessor of Valencia county, in the Territory of New Mexico, made and entered upon his books an assessment, in the words and figures following to wit:

"1894.

Atlantic and Pacific Railroad Company:

Lands as per itemized list, 93.458 miles.
Main track at $6,500.00.
Rio Puerco station.
San Jose "
El Rito "
Laguna "
Cubero "
McCarty's "
Grant's "
Bluewater "
No. of acres, 169,167.48 at 20c.
Value of land, $33,833.00.
Value of personal property, $2,004.99."

That thereafterwards on that assessment being returned, the board of county commissioners of said county in session as a board of equalization, raised said assessment so made by the assessor and made the assessment of which the following is a true and correct copy:

"Fixed by county commissioners:

$84,583.74.		
$607,477.00.		
$2,289.00	Rio Puerco	station.
$541.00	San Jose	"
$842.00	El Rito	"
$4,025.00	Laguna	"
$700.00	Cubero	"
$1,045.00	McCarty's	"
118 $3,150.00	Grant's	"
$4,757.00	Bluewater	"

Final assessed value, $711,414.73."

That thereafterwards in conformity to the provisions of the laws of the Territory of New Mexico, there *was* levied against the assessment so made by the assessor, by the proper authorities of Valencia county, in the Territory of New Mexico, taxes in the aggregate amounting to $26,144.46.

That of the taxes so levied, the predecessors in office of the said C. W. Smith, receiver, paid all the taxes assessed by the assessor of the personal property so assessed, as shown hereinabove and paid the taxes levied upon the assessment of the 169,167.48 acres of land assessed by said assessor, but refused to pay the balance of the taxes because of the fact that the assessment as made by said assessor and increased by said board of equalization, was an assessment of the right of way and station grounds of the Atlantic and Pacific railroad, which were and are exempt under the act of Congress creating said railroad company, and that thereupon and thereafterwards and at a date unknown to these defendants, but during the year 1896, the tax collector for said county made the assessment levied and set forth in the fourth paragraph of the intervening petition, which said assessment was and is an assessment upon the superstructure on the right of way of the Atlantic and Pacific Railroad Company and the station grounds appurtenant thereto, and upon no other property of any kind or description, all of which articles so assessed were, are and always have been since the construction of the said railroad, a part of the said right of way and station grounds,
and that no other property of any kind or description en-
119 tered into said assessment, and that the property so assessed
has been fully hereinbefore and above set forth and described.

All of which said several matters and things hereinabove stated and set forth said United States Trust Company of New York and said C. W. Smith, as such receiver, jointly and severally aver to be true, and they each jointly and severally plead the same to the said intervening bill of complaint in so far as the same seeks to recover

for taxes alleged to be due from either the Atlantic and Pacific Railroad Company, or C. W. Smith, its receiver, for the year 1894, and they each of them jointly and severally humbly crave the judgment of this court whether they be compelled to make any other or further answer to the said bill.

C. N. STERRY,
KARL A. SNYDER,
Solicitors and Counsel for Each of the Defendants Joining Herein.

Fourth Plea.

The United States Trust Company of New York, and C. W. Smith, the receiver of the Atlantic and Pacific Railroad Company, for their fourth plea to the intervening petition filed herein, by protestation, not confessing or acknowledging all or any part of the matters and things in said intervening petition mentioned to be true in such manner and form as the same are therein set forth and alleged, do plead thereto in relation to the amount of taxes alleged to have been levied and assessed for the year 1895 against the Atlantic and Pacific Railroad Company in the sum of $23,020.16, the fol-
120 lowing facts in bar thereto and in bar to the right of the Territory of New Mexico to receive and collect said amount or any part thereof, from said receiver:

That the Atlantic and Pacific Railroad Company was incorporated by the act of Congress of the United States of America, approved July 27, 1866, and that under and by virtue of said act, and prior to the year 1885, the Atlantic and Pacific Railroad Company constructed and built, and has ever since maintained in the county of Valencia, Territory of New Mexico, 93.458 miles of main line of railroad track upon the right of way granted to it under said act of Congress, over and through lands that at that time belonged to the Government of the United States and over and upon a right of way through lands in said county belonging to private individuals or corporations or associations, which said right of way was and is of the extent of 200 feet in width under and by virtue of said act of Congress, both through the lands belonging to the United States, as well as through the lands belonging to others.

That about 58 miles of said right of way in said county and Territory was and is through land which was not Government land, but which belonged to private individuals or corporations, and was acquired by the railroad company under and through the right conferred upon it by said act of Congress. That the balance of said right of way was and is over and upon public lands of the United States. That in addition to the main track built upon said right of way, the railroad company built and has maintained on said right of way, through Valencia county, in said Territory, 3.433 miles of sidings; making a total amount of trackage in Valencia county in said Territory in the year 1892 of 96.891 miles; all of
121 which was upon the right of way granted to and acquired by the Atlantic and Pacific Railroad Company under said act of Congress. That in addition to said trackage, the

Atlantic and Pacific Railroad Company in 1895 had in Valencia county, in said Territory, upon its right of way and as a part thereof, station grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables and water stations, which were, have been, and are now stations upon said line of railroad in said county and Territory named as follows:

Rio Puerco, San Jose, El Rito, Laguna, Cubero, McCarty's, Grant's, Bluewater.

That upon said right of way and station grounds, prior to 1892, and up to January 4, 1893, the Atlantic and Pacific Railroad Company had constructed, and permanently attached to its right of way and station grounds, ties and rails sufficient to make a railroad track to operate its trains upon, and all necessary station buildings, depots, machine shops, switches, side tracks, turn-tables and water tanks; and it also had permanently constructed thereon, bridges and culverts of iron, stone, and wood; and it also built, established and maintained over, along and upon its said right of way, a grade for its tracks and side tracks, which was and is built in a permanent manner, and that the ties for its tracks were and are firmly embedded in this grade which consists of earth, gravel, cinders and stone; and that the rails for its main and side tracks are spiked to and firmly fastened to its ties so embedded in said grade, so that the same form a substantial and permanent railroad track and side tracks for the operation of the railroad trains of the Atlantic and Pacific Railroad Company, consisting of both passenger and freight trains, thereon; that the bridges and culverts built and main-
122 tained by the railroad company upon said right of way in said county and Territory, are a part of said main track and side tracks; and that the buildings at the stations above described, are such as were and are necessary for the operation of the said railroad by said railroad company, and are permanently attached and fixed to said station grounds and right of way.

That in the year 1895 the Atlantic and Pacific Railroad Company had in said county and Territory, in addition to the property hereinabove described, a large amount of land, which it then claimed belonged to it as a part of the land granted to it by said act of Congress, and it also had some personal property subject to taxation therein.

That some time in the year 1896, the then collector of Valencia county, in the Territory of New Mexico, pretended to make and levy the assessment and taxes pretended to be made and as alleged and shown by the allegations contained in paragraph 5 of the intervening petition, and the said collector was wholly without any authority in law or in equity to make said assessment and said levies by reason of the foregoing and following facts:

That some time in the year 1895, and after the first day of March, A. D., 1895, the exact date of which these defendants are unable to state, the duly appointed qualified and acting assessor of Valencia county, in the Territory of New Mexico, made and entered upon his books an assessment in the words and figures following, to wit:

"1895.

"Atlantic and Pacific Railroad Company.

"Section tools and miscellaneous property, office, station and telegraph furniture, personal property of the A. and P. R. R. Co., Jno. J. McCook, A. F. Walker, and J. C. Wilson, receivers. Fixed by assessor.

123 "Cross-ties, rails, fish-plates, spikes, culverts, bridges, depots, turn-tables, side tracks, buildings and entire superstructure on right of way, 93.7 miles in Valencia county at $6,500.00 per mile. Land as per specified list. No of acres 265,361.91 at 20 cents per acre. Value of land, $53,072.38. Value of personal property, $609,050.00. Fixed by county commissioners, $79,608.57. Final assessed value, $690,663.56."

That thereafterwards in conformity to the provisions of the laws of the Territory of New Mexico, there *was* levied against the assessment so made by the assessor, by the proper authorities of Valencia county, in the Territory of New Mexico, taxes in the aggregate amounting to $25,381.84.

That of the taxes so levied, the predecessors in office of the said C. W. Smith, receiver, paid all the taxes assessed by the assessor of the personal property so assessed, as shown hereinabove and paid the taxes levied upon the assessment of the 265,361.91 acres of land assessed by said assessor, but refused to pay the balance of the taxes because of the fact that the assessment as made by said assessor, was an assessment of the right of way and station grounds of the Atlantic and Pacific railroad, which were and are exempt under the act of Congress creating said railroad company, and that thereupon and that thereafterwards, and at a date unknown to these defendants, but during the year 1896, the tax collector for said county made the assessment levied and set forth in the fifth paragraph of the intervening petition which said assessment was and is an assessment upon the superstructure on the right of way of the Atlantic and Pacific Railroad Company, and the station grounds appurtenant thereto, and upon no other property of any kind or descrip-

124 tion, all of which articles so assessed were, are, and always have been since the construction of the said railroad a part of the said right of way and station grounds, and that no other property of any kind or description entered into said assessment, and that the property so assessed has been fully hereinbefore and above set forth and described.

All of which said several matters and things hereinabove stated and set forth said United States Trust Company of New York and said C. W. Smith, as such receiver, jointly and severally aver to be true, and they each jointly and severally plead the same to the said intervening bill of complaint in so far as the same seeks to recover for taxes alleged to be due from either the Atlantic and Pacific Railroad Company, or C. W. Smith, its receiver, for the year 1895, and they each of them jointly and severally humbly crave the judgment

of this court whether they be compelled to make any other or further answer to the said bill.

C. N. STERRY,
KARL A. SNYDER,
Solicitors and Counsel for Each of the Defendants Joining Herein.

Fifth Plea.

The United States Trust Company of New York, and C. W. Smith, the receiver of the Atlantic and Pacific Railroad Company, for their fifth plea to the intervening petition filed herein, by protestation, not confessing or acknowledging all or any part of the matters and things in said intervening petition mentioned to be true in such manner and form as the same are therein set forth and al-
125 leged, do plead thereto in relation to the amount of taxes alleged to have been levied and assessed for the year 1896 against the Atlantic and Pacific Railroad Company in the sum of $24,272.96, the following facts in bar thereto and in bar of the right of the Territory of New Mexico to receive and collect said amount or any part thereof, from said receiver.

That the Atlantic and Pacific Railroad Company was incorporated by the act of Congress of the United States of America, approved July 27, 1866, and that under and by virtue of said act, and prior to the year 1855, the Atlantic and Pacific Railroad Company constructed and built, and has ever since maintained in the county of Valencia, Territory of New Mexico, 93.458 miles of main line of railroad track upon the right of way granted to it under said act of Congress, over and through lands that at that time belonged to the Government of the United States and over upon a right of way through lands in said county belonging to private individuals or corporations or associations, which said right of way was and is of the extent of 200 feet in width under and by virtue of said act of Congress, both through the lands belonging to the United States, as well as through the lands belonging to others.

That about 58 miles of said right of way in said county and Territory was and is through land which was not Government land, but which belonged to private individuals or corporations, and was acquired by the railroad company under and through the right conferred upon it by said act of Congress. That the balance of said right of way was and is over and upon public lands of the United States. That in addition to the main track built upon said right of way, the railroad company built and has maintained on
126 said right of way through Valencia county, in said Territory, 3.433 miles of sidings; making a total amount of trackage in Valencia county in said Territory, in the year 1892, of 96.891 miles; all of which was upon the right of way granted to and acquired by the Atlantic and Pacific Railroad Company under said act of Congress. That in addition to said trackage, the Atlantic and Pacific Railroad Company in 1896 had in Valencia county, in said Territory, upon its right of way and as a part thereof, station grounds

for station buildings, work shops, depots, machine shops, switches, side tracks, turn-tables and water stations, which were, have been and are now stations upon said line of railroad in said county and Territory, named as follows:

Rio Puerco, San Jose, El Rito, Laguna, Cubero, McCarty's ,Grant's Bluewater.

That upon said right of way and station grounds, prior to 1892, and up to January 4, 1893, the Atlantic and Pacific Railroad Company had constructed, and permanently attached to its right of way and station grounds, ties and rails, sufficient to make a railroad track to operate its trains upon, and all necessary station buildings, depots, machine shops, switches, side tracks, turn-tables and water tanks; and it also had permanently constructed thereon bridges and culverts of iron, stone and wood; and it also built, established and maintained over, along and upon its said right of way, a grade for its tracks and side tracks, which was and is built in a permanent manner, and that the ties for its tracks were and are firmly embedded in this grade, which consists of earth, gravel, cinders and stone; and that the rails for its main and side tracks are spiked to and firmly fastened to its ties so embedded in said grade, so
127 that the same form a substantial and permanent railroad track and side tracks for the operation of the railroad trains of the Atlantic and Pacific Railroad Company, consisting of both passenger and freight trains, thereon; that the bridges and culverts built and maintained by the railroad company upon said right of way in said county and Territory, are a part of said main track and side tracks; and that the buildings at the stations, above described, are such as were and are necessary for the operation of the said railroad by said railroad company, and are permanently attached and fixed to said station grounds and right of way.

That in the year 1896 the Atlantic and Pacific Railroad Company had in said county and Territory, in addition to the property hereinabove described, a large amount of land which it then claimed belonged to it as a part of the lands granted to it by said act of Congress, and it also had some personal property subject to taxation therein.

That some time in the year 1896 the then collector of Valencia county, in the Territory of New Mexico, pretended to make and levy the assessment and taxes pretended to be made and as alleged and shown by the allegations contained in paragraph 6 of the intervening petition, and the said collector was wholly without any authority in law or in equity to make said assessment and said levies by reason of the foregoing and following facts:

That some time in the year 1896, and after the first day of March, A. D. 1896, the exact date of which these defendants are unable to state, the duly appointed, qualified and acting assessor of Valencia county, in the Territory of New Mexico, made and entered upon his assessment book an assessment in the words and figures following, to wit:

128 "1896.

Atlantic and Pacific Railroad Company.

Section tools and miscellaneous property, value of personal property $315.99.

Office, station and telegraph furniture, value of personal property $1,689.00.

Personal property of the A. and P. R. R. Co., C. W. Smith, receiver, taxed by assessor:

Cross-ties, rails, fish-plates, spikes, culverts, bridges, depots, turntables, side tracks, buildings and entire superstructure on right of way 93.7 miles in Valencia county at $6,500.00 per mile.

Lands as per list attached to return, amount of acres 253,423.21 at 20c.

Total value of land improvements, $50,684.64.

Value of personal property, $609,050.

Fixed by assessor, $126,711.60."

That thereafterwards on that assessment being returned, the board of county commissioners of said county, in session as a board of equalization, changed said assessment so made by the assessor and fixed the value of land at $76,026.96, as follows:

Fixed by county commissioners $76,026.96.

Final assessed value, { $2,004.99. $609,050.00. $76,026.96.

That thereafterwards, in conformity to the provisions — the laws of the Territory of New Mexico, there *was* levied against the assessment, so made by the assessor, by the proper authorities of Valencia county, in the Territory of New Mexico, taxes in the aggregate amounting to $26,624.41.

That of the taxes so levied, the said C. W. Smith, receiver,
129 paid all the taxes assessed by the assessor of the personal property so assessed, as shown hereinabove, and paid the taxes levied upon the assessment of the 253,423.21 acres of land assessed by said assessor, but refused to pay the balance of the taxes because of the fact that the assessment as made by the assessor was an assessment of the right of way and station grounds of the Atlantic and Pacific railroad, which were and are exempt under the act of Congress creating said railroad company, and that thereupon and thereafterwards and at a date unknown to these defendants, but during the year 1896, the tax collector for said county made the assessment levied and set forth in the fourth paragraph of the intervening petition, which said assessment was and is an assessment upon the superstructure on the right of way of the Atlantic and Pacific Railroad Company and the station grounds appurtenant thereto, and upon no other property of any kind or description, all of which articles so assessed were, are and always have been since the construction of the said railroad a part of the said right of way and station grounds, and that no other property of

any kind or description entered into said assessment, and that the property so assessed has been fully hereinbefore and above set forth and described.

All of which said several matters and things hereinabove stated and set forth, said United States Trust Company of New York and said C. W. Smith, as such receiver, jointly and severally aver to be true, and they each jointly and severally plead the same to the said intervening bill of complaint in so far as the same seeks to recover for taxes alleged to be due from either the Atlantic and Pacific Railroad Company or C. W. Smith, its receiver, for the year 1896, and they each of them jointly and severally humbly crave the
130 judgment of this court whether they be compelled to make any other or further answer to the said bill.

C. N. STERRY,
KARL A. SNYDER,
Solicitors and Counsel for Each of the Defendants Joining Herein.

And thereafter, on to wit, the 23rd day of June, A. D., 1897, the same being in vacation, there was entered of record a decree dismissing intervening petition of Territory for Valencia County taxes, and order allowing appeal, which said decree is in the words and figures following, to wit:

In the District Court, Second Judicial District, Territory of New Mexico.

UNITED STATES TRUST COMPANY OF NEW YORK
vs.
ATLANTIC AND PACIFIC RAILROAD COMPANY *et al.*

In the matter of the intervening petition of the Territory of New Mexico filed in the above-entitled cause.

The said matter coming on to be heard upon the question of the sufficiency of the joint and several pleas of the United States Trust Company and Charles W. Smith, receiver of the property of the Atlantic and Pacific Railroad Company, to the said intervening petition, for the collection of taxes alleged to be due in Valencia county, after hearing F. W. Clancy for the said intervening petitioner and Karl A. Snyder, Esq., on behalf of the said trust company and the said receiver, the court, being sufficiently advised in the premises finds that it is neither necessary nor proper to pass upon the question of the sufficiency of said pleas for the reason that the said intervening petition and matters and things therein
131 set up fall within the decision of the supreme court of New Mexico in the matter of a like intervening petition in this cause, rendered on the 18th of December, 1896, and are therefore not sufficient to entitle the said intervening petitioner to the relief sought by its petition, and that this petition ought to be dismissed.

It is therefore ordered, adjudged and decreed, that the said intervening petition be and the same hereby is dismissed. And thereupon

the said intervening petitioner prays the court for an appeal to the supreme court of the Territory of New Mexico from the order and decree of this court. It is therefore ordered by the court that the said intervening petitioner be and it hereby is allowed an appeal from the said order and decree of this court to the supreme court of the Territory of New Mexico.

(Signed) N. C. COLLIER, *Judge.*

TERRITORY OF NEW MEXICO, *Second Judicial District Court,* } ss:

I, O. N. Marron, clerk of the district court of the second judicial district of the Territory of New Mexico, do hereby certify that the above and foregoing is a true, correct and complete transcript of such part of the record and proceedings had in the matter of the intervening petition of the Territory of New Mexico in a cause pending in said court entitled The United States Trust Company of New York against The Atlantic and Pacific Railroad Company and others, No. 1122 as the appellant deems necessary for a review of the decree, according to the direction of its solicitor.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court this third day of July, A. D., 1897.

[SEAL.] O. N. MARRON, *Clerk.*

132 And afterwards, to wit, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors; which said assignment of errors is in the words and figures following, to wit:

In the Supreme *Supreme* Court of the Territory of New Mexico, July Term, 1897.

TERRITORY OF NEW MEXICO, Appellant, *vs.* UNITED STATES TRUST COMPANY OF NEW York and Charles A. Smith, Receiver of Atlantic & Pacific Railroad Company.	No. 733. Appeal from Second Judicial District Court.

Now comes The Territory of New Mexico, appellant, and makes the following assignment of errors in the above-entitled cause and alleges said grounds of error as reasons why the decree rendered therein should be reversed:

1. That the court erred in holding that appellant's intervening petition and the matters and things therein set up are and were not sufficient to entitle appellant to the relief sought by its petition.

2. That the court erred in refusing to grant appellant the relief sought by and claimed in said intervening petition.

133 3. That the court erred in dismissing said intervening petition.

ALBERT B. FALL,
Solicitor General of New Mexico.

F. W. CLANCY, *Of Counsel.*

Endorsement: No. 733. In the supreme court, July term, 1897. Territory of New Mexico, appellant, *vs.* United States Trust Company of N. Y. *et al.* Assignment of errors. Filed in my office this Aug. 3rd, 1897. Geo. L. Wyllys, clerk. Albert B. Fall, solicitor general; F. W. Clancy, att'ys for appellant.

134 And afterwards, to wit, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico on the 12th day of August, A. D. 1897, an assignment of errors; which said assignment of errors is in the words and figures following, to wit:

Assignment of Errors.

TERRITORY OF NEW MEXICO, Appellant, *vs.* UNITED STATES TRUST COMPANY OF NEW YORK and Charles A. Smith, Receiver of Atlantic & Pacific Railroad Company.	Appeal from the Second Judicial District.

Now comes the said appellant, by its solicitor, and says to the court here that there is manifest error in the record and decree in this cause, and assigns for error that the court below erred in dismissing the intervening petition of the appellant. Wherefore appellant prays that the decree of the court below may be reversed, vacated, and set aside, and that a decree be entered herein as to this court may seem proper and according to law.

F. W. CLANCY,
Solicitor for Appellant.

135 Endorsement: No. 733. In the supreme court, Territory of New Mexico. Territory of New Mexico, appellant, *vs.* United States Trust Company of New York *et al.*, appellees. Assignment of errors. Filed in my office this Aug. 12th, 1897. Geo. L. Wyllys, clerk.

And afterwards, to wit, on the 20th day of August, A. D. 1897, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion for leave to file addition to record; which said motion is in the words and figures following, to wit:

In Supreme Court, Territory of New Mexico, July Term, 1897.

TERRITORY OF NEW MEXICO *vs.* UNITED STATES TRUST COMPANY OF NEW YORK *et al.*	733.

Now comes said appellant, Territory of New Mexico, by its solicitor, and shows to the court here that there was, in making up the record herein, accidentally omitted from said record certain
136 copies of additional assessments which were a part of the intervening petition of said appellant, and appellant now

produces in court a copy of said copies, duly certified by the clerk of the court below, and moves the court for leave to file said certified copy as an addition to and part of the record herein.

F. W. CLANCY,
Solicitor for Appellant.

Endorsement: No. 733. In the supreme court, Territory of New Mexico. Territory of New Mexico, appellant, *vs.* United States Trust Company of New York *et al.*, appellees. Motion for leave to file addition to record. Filed in my office this Aug. 20th, 1897. Geo. L. Wyllys, clerk.

And afterwards, to wit, on the said 20th day of August, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of govern-
137 ment of said Territory, on July the 26th, A. D. 1897, and on the twenty-third day of said term of said supreme court, the same being Friday, August 20th, 1897, the following, among other, proceedings were had, to wit:

TERRITORY OF NEW MEXICO, Appellant, *vs.* UNITED STATES TRUST COMPANY OF NEW YORK *et al.*	733. Appeal from Bernalillo County.

Now comes said appellant, Territory of New Mexico, by its solicitor, and shows to the court here that there was, in making up the record herein, accidentally omitted from said record certain copies of additional assessments which were a part of the intervening petition of said appellant, and appellant now produces in court a copy of said copies, duly certified by the clerk of the court below, and moves the court for leave to file said certified copies — an addition to and part of the record herein; and said appellees appearing in court by their counsel, Karl A. Snyder, Esq., and not resisting said motion, the court, being sufficiently advised in the premises, grants the same. It is therefore ordered by the court that leave be, and it hereby is, given to appellant to file the said certified copy as an addition to and part of the record herein.

138 And thereafter, on, to wit, August 20th, 1897, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an addition to record; which said addition to record is in the words and figures following, to wit:

Additional Assessment for the Year Eighteen Hundred and Ninety-two.

The following was omitted in the assessment of the year 1892, and was not put upon the assessor's book, and is now, in accordance with the provisions of sections 2847 and 2848, here listed, valued, and assessed by the collector:

The cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in the county of Valencia and constituting "improvements" upon the land embraced within said right of way where same runs over what was public domain of the United States when said right of way was granted to said company, 33 miles in length, valued at $6,500 per mile..... $214,500

Also the cross ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic & Pacific Railroad Company in said county
139 of Valencia and constituting "improvements" upon the land embraced within said right of way where it runs over land which was held in private ownership at the time of the grant of said right of way to said railroad company, 60.7 miles, valued at $6,500 per mile..... $394,550

Station-houses, depots, switches, water tanks, and all other improvements at Rio Puerco station.....	1,800
Station-houses, depots, switches, water tanks, and all other improvements at San Jose station.....	540
Station-houses, depots, switches, water tanks, and all other improvements at El Rito station	600
Station-houses, depots, switches, water tanks, and all other improvements at La Guna station.....	2,100
Station-houses, depots, switches, water tanks, and all other improvements at Cubero station.....	600
Station-houses, depots, switches, water tanks, and all other improvements at McCarty's station	1,300
Station-houses, depots, switches, water tanks, and all other improvements at Grant's station.....	3,100
Station-houses, depots, switches, water tanks, and all other improvements a- Blue Water station.....	1,300
	$11,340

140 *Additional Assessment for the Year Eighteen Hundred and Ninety-three.*

The following was omitted in the assessment of the year 1893, and was not put upon the assessor's book, and is now, in accordance with the provisions of sections 2847 and 2848, here listed, valued, and assessed by the collector:

The cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in the county of Valencia and constituting "improvementss" upon the land embraced within said right of way where same runs over what was public domain of the United States when said right of way was granted to said company, 33 miles in length, valued at $6,500 per mile..... $214,500

Also the cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in said county of Valencia and constituting "improvement" upon the land embraced within said right of way where it runs over land which was held in private ownership at the time of the grant of said right of way to said railroad company, 60.7 miles, valued at $6,500 per mile $394,550

141 Station-houses, depots, switches, water tanks, and all other improvements at Rio Puerco station..... $1,800
Station-houses, depots, switches, water tanks, and all other improvements at San José station..... 540
Station-houses, depots, switches, water tanks, and all other improvements at El Rito station..... 600
Station-houses, depots, switches, water tanks, and all other improvements at Laguna station 2,100
Station-houses, depots, switches, water tanks, and all other improvements at Cubero station..... 600
Station-houses, depots, switches, water tanks, and all other improvements at McCarty's station..... 1,300
Station-houses, depots, switches, water tanks, and all other improvements at Grant's station 3,100
Station-houses, depots, switches, water tanks, and all other improvements at Bluewater station..... 1,300

$11,340

Additional Assessment for the Year Eighteen Hundred and Ninety-four.

The following was omitted in the assessment of the year 1894, and was not put upon the assessor's book, and is now, in accordance with the provisions of sections 2847 and 2848, here listed, valued,
142 and assessed by the collector:

The cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in the county of Valencia and constituting "improvements" upon the land embraced within said right of way where same runs over what was public domain of the United States when said right of way was granted to said company, 33 miles in length, valued at $6,500 per mile $214,500

Also the cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph lines, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in said county of Valencia and constituting "improvements" upon the land embraced within said right of way where it runs over land which was held in private ownership at the time of the grant of said right of way to said railroad company, 60.7 miles, valued at $6,500 per mile..... $394,550

Station-houses, depots, switches, water tanks, and all other improvements at Rio Puerco station	$2,289
Station-houses, depots, switches, water tanks, and all other improvements at San Jose station	541
143 Station-houses, depots, switches, water tanks, and all other improvements at El Rito station	842
Station-houses, depots, switches, water tanks, and all other improvements at Laguna station	4,025
Station-houses, depots, switches, water tanks, and all other improvements at Cubero station	700
Station-houses, depots, switches, water tanks, and all other improvements at McCarty's station	1,045
Station-houses, depots, switches, water tanks, and all other improvements at Grant's station	3,150
Station-houses, depots, switches, water tanks, and all other improvements at Bluewater station	4,757
	$17,349

Additional Assessment for the Year Eighteen Hundred and Ninety-five.

The following was omitted in the assessment of the year 1895, and was not put upon the assessor's book, and is now, in accordance with the provisions of sections 2847 and 2848, here listed, valued, and assessed by the collector:

The cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph line, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in the county of Valencia and constituting "improvements" upon the land	
144 embraced within said right of way where same runs over what was public domain of the United States when said right of way was granted to said company, 33 miles in length, valued at $6,500 per mile	$214,550
Also the cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph lines, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in said county of Valencia and constituting "improvements" upon the land embraced within said right of way where it runs over land which was held in private ownership at the time of the grant of said right of way to said railroad company, 60.7 miles, valued at $6,500 per mile	$394,550
Station-houses, depots, switches, water tanks, and all other improvements at Rio Puerco station	$2,289
Station-houses, depots, switches, water tanks, and all other improvements at San Jose station	541
Station-houses, depots, switches, water tanks, and all other improvements at El Rito station	842
Station-houses, depots, switches, water tanks, and all other improvements at Laguna station	4,025

Station-houses, depots, switches, water tanks, and all other improvements at Cubero station	700
Station-houses, depots, switches, water tanks, and all other improvements at McCarty's station	1,045
Station-houses, depots, switches, water tanks, and all all other improvements at Grant's station	3,150
Station-houses, depots, switches, water tanks, and all other improvements at Bluewater station	4,757
	$17,349

Additional Assessment for the Year Eighteen Hundred and Ninety-six.

The following was omitted in the assessment of the year 1896, and was not put upon the assessor's book, and is now, in accordance with the provisions of sections 2847 and 2848, here listed, valued, and assessed by the collector:

The cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph lines, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in the county of Valencia and constituting "improvements" upon the land embraced within said right of way where same runs over what was public domain of the United States when said right of way was granted to said company, 33 miles in length, valued at $6,500 per mile	$214,500
Also the cross-ties, rails, fish-plates, bolts, spikes, bridges, culverts, telegraph lines, and other structures erected upon the right of way of the Atlantic and Pacific Railroad Company in said county of Valencia and constituting "improvements" upon the land embraced within said right of way where it runs over land which was held in private ownership at the time of the grant of said right of way to said railroad company, 60.7 miles, valued at $6,500 per mile	$394,550
Station-houses, depots, switches, water tanks, and all other improvements at Rio Puerco station	$2,289
Station-houses, depots, switches, water tanks, and all other improvements at San Jose station	541
Station-houses, depots, switches, water tanks, and all other improvements at El Rito station	842
Station-houses, depots, switches, water tanks, and all other improvements at Laguna station	4,025
Station-houses, depots, switches, water tanks, and all other improvements at Cubero station	700
Station-houses, depots, switches, water tanks, and all other improvements at McCarty's station	1,045
Station-houses, depots, switches, water tanks, and all other improvements at Grant's station	3,150
Station-houses, depots, switches, water tanks, and all other improvements at Bluewater station	4,757
	$17,349

TERRITORY OF NEW MEXICO, }
Second Judicial District. }

I, the undersigned, clerk of the district court of said second judicial district, do hereby certify that the above and foregoing five pages contain a true, correct, and complete copy of the copies of additional assessments which were attached to and made a part of the intervening petition of the Territory of New Mexico as to Valencia County taxes, which was filed in my office on the 10th day of June, 1897, in that certain cause wherein United States Trust Company of New York was complainant and Atlantic and Pacific Railroad Company and others were defendants, said intervening petition being the same as to which a decree of dismissal was entered in said district court on the 23rd day of June, 1897, from which decree an appeal has been taken to the supreme court of the Territory of New Mexico.

In witness whereof I hereunto set my hand and affix the seal of said court this 19th day of August, A. D. 1897.

[SEAL.] O. N. MARRON, *Clerk.*

148 Endorsement: No. 733. In the supreme court, Territory of New Mexico. Territory of New Mexico *vs.* United States Trust Co. *et al.* Addition to record. Filed in my office this Aug. 20th, 1897. Geo. L. Wyllys, clerk.

And thereafter, to wit, on the 20th day of August, A. D. 1897, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion for affirmance of judgment; which said motion is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico.

TERRITORY OF NEW MEXICO, Appellant,
vs.
UNITED STATES TRUST COMPANY *et al.*, Appellees. } No. 733.

Notice of Motion to Affirm Judgment.

To F. W. Clancy, Esq., solicitor for appellant:

149 You are hereby notified that the above-named appellees will, at the court-house, in Santa Fé, N. M., on Thursday, August 19th, 1897, at the hour of nine o'clock a. m., or as soon thereafter as counsel can be heard, present to the supreme court of New Mexico the annexed motion for affirmance of the judgment of the court below in the above-entitled cause; at which time and place you are notified to be present and make such objection as you may have to the granting of said motion.

C. N. STERRY,
KARL A. SNYDER,
Solicitors for Appellees.

Albuquerque, N. M., August 16th, 1897.

In the Supreme Court of the Territory of New Mexico.

TERRITORY OF NEW MEXICO, Appellant,
vs.
UNITED STATES TRUST COMPANY OF NEW YORK and C. W. Smith, Receiver of Atlantic & Pacific Railroad Company, Appellees. } No. 733.

Motion for Affirmance of Judgment.

Come now the above-named appellees, by their solicitors, C. N. Sterry and Karl A. Snyder, and move this court to affirm the judgment and decree of the court below dismissing the petition of the Territory of New Mexico in this cause for the reason and upon
150 the ground that this court heretofore, to wit, on the 18th day of December, 1896, in a similar action between the same parties (reported in 47th Pacific Reporter, page 725), decided every question involved in this case, and held that under the act of Congress incorporating the Atlantic & Pacific Railroad Company, approved July 27, 1866, its right of way includes all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water stations, and said right of way, including the road-bed, ties, and rails, station buildings, workshops, depots, machine shops, &c., is not liable to taxation in the Territory of New Mexico, and this case is *stari decisis*.

C. N. STERRY,
KARL A. SNYDER,
Solicitors for Appellees.

Service of foregoing motion & notice acknowledged this 17th of August, 1897.

F. W. CLANCY.

Endorsement: No. 733. In the supreme court, Territory of New Mexico. Territory of New Mexico, appellant, — United States
151 Trust Co. *et al.*, appellees. Motion for affirmance of judgment. Filed in my office this Aug. 20th, 1897. Geo. L. Wyllys, clerk. C. N. Sterry & Karl A. Snyder, Albuquerque, N. M., solicitors for appellees.

And afterwards, to wit, on the 20th day of August, A. D. 1897, at the said regular term of the said supreme court of the Territory of New Mexico, the following, among other, proceedings were had, which *is* in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, Appellant,
vs.
UNITED STATES TRUST COMPANY OF NEW YORK *et al.*, Appellees. } 733. Appeal from Bernalillo County.

Now come the appellees herein, by their solicitor, Karl A. Snyder, Esq., and moves the court to affirm the judgment of the

court below in this cause, and after argument of counsel for the respective parties hereto was heard, and the court, not being fully advised in the premises, takes the same under advisement.

152 And afterward, to wit, on the twenty-fifth day of said regular term of said supreme court of said Territory, the same being Monday, the 23rd day of August, A. D. 1897, the following, among other, proceedings were had, to wit:

TERRITORY OF NEW MEXICO, Appellant, *vs.* THE UNITED STATES TRUST COMPANY OF New York and Charles A. Smith, Receiver of Atlantic and Pacific Railroad Company, Appellees.	733. Appeal from District Court for Bernalillo County.

This cause having been submitted to and taken under advisement by the court at a former day of the present term on the motion of appellant to affirm the judgment of the court below, the court, being now sufficiently advised in the premises, announces its decision by Chief Justice Smith, the associate justices concurring, denying said motion and affirming the judgment of the court below upon the authority announced in cause No. 670 on the docket of this court, entitled The United States Trust Company of New York and C. W. Smith, receiver of the property of the Atlantic and Pacific Railroad Company, *vs.* Atlantic and Pacific Railroad Com-
153 pany *et al.*, in the matter of the intervening petition of the Territory of New Mexico. It is therefore considered and adjudged by the court that the judgment of the district court of the county of Bernalillo, whence this cause came into this court, be, and the same hereby is, affirmed upon the authority above stated, and, in accordance with said judgment of said district court, it is ordered, adjudged, and decreed that the said intervening petition be, and the same hereby is, dismissed, and thereupon the appellant herein prays the court for an appeal to the Supreme Court of the United States of America from the order and decree of this court. It is therefore ordered by the court that the appellant herein, The Territory of New Mexico, be, and it hereby is, allowed an appeal from the said order and decree of this court to the Supreme Court of the United States of America.

UNITED STATES OF AMERICA,
Territory of New Mexico, Supreme Court.

I, Geo. L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing 154 pages *is* a
154 true and perfect copy of the transcript of record and papers on file and record entries in a cause lately pending in said supreme court entitled Territory of New Mexico *vs.* The United States Trust Company of New York and Charles A. Smith, receiver of Atlantic and Pacific Railroad Company, as the same appears on file and of record in my office.

Seal Supreme Court, Territory of New Mexico.

Witness my hand and the seal of said supreme court of the Territory of New Mexico this 25th day of August, A. D. 1897.

GEO. L. WYLLYS, *Clerk.*

Endorsed on cover: Case No. 16,671. New Mexico Territory supreme court. Term No., 458. The Territory of New Mexico, appellant, *vs.* The United States Trust Company of New York *et al.* Filed September 20th, 1897.